IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA	) Bay City, Michigan
	) March 6, 2019
vs.	) 8:25 a.m.
	)
JAMES D. PIERON, JR.,	)
	) Case No. 18-20489
Defendant.	)
_____	)

TRANSCRIPT OF TRIAL - VOLUME 6
BEFORE THE HONORABLE THOMAS L. LUDINGTON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: JANET L. PARKER
JULES M. DEPORRE
United States Attorney
Eastern District of Michigan
101 First Street
Suite 200
Bay City, MI 48708

For the Defendant: MICHAEL L. MINNS
ASHLEY B. ARNETT
Minns & Arnett
9119 South Gessner; Suite One
Houston TX 77074

For the Defendant: KENNETH SASSE
Attorney at Law
27 E. Flint Street; 2nd Floor
Lake Orion, MI 48362
(248) 821-7325

Court Reporter: Carol M. Harrison, RMR, FCRR
1000 Washington Avenue
Bay City, MI 48708

Proceedings reported by stenotype reporter.
Transcript produced by Computer-Aided Transcription.

INDEX

Preliminary Jury Instructions by The Court	30
Closing Argument by Ms. Parker	46
Closing Argument by Mr. Minns	61
Rebuttal Closing Argument by Ms. Parker	90
Final Instructions by The Court	97

P R O C E E D I N G S

(At 8:25 a.m., proceedings commenced.)

(Defendant present.)

THE CLERK: United States of America versus James Pieron, Jr., Case No. 18-20489.

THE COURT: Record will reflect the fact that we have counsel present and the fact that it is so warm you would almost feel like you're in Dallas.

Defendants have filed their Rule 29 motion. I've had a chance to briefly examine it. What I was hoping to do is to be fairly brief in our address on the Rule 29 motion. It is a matter, indeed, that we can take under advisement under subsection B. My primary interest here is maximize the time that we have with the jury.

Anything that you'd like to comment on that is not appropriately covered in the written motion for the defense?

MR. SASSE: No, Your Honor. We'll stand by the motion at this point.

THE COURT: Indeed.

Brief response from the Government.

MS. PARKER: Well, Your Honor, the Government submits that there is evidence in the record that would allow a reasonable jury to find the defendant guilty. There's evidence relating to each of the elements of the offense. If the Court wishes me to elaborate further, I will.

THE COURT: Respectfully, I don't believe that is necessary. The primary elements, those of acts of evasion, intent are an established jury question in my view based on the evidence that has been tendered during the course of the Government's case.

The fact is that we have indeed three different returns furnished to the Government with three different measures of AGI and taxation and no payment of that until a substantially later period of time.

In addition, the bill of particulars laid out the factual information that addressed additional alleged acts of evasion, and the evidence that's been introduced at this point substantiates a jury question in my view. I would respectfully deny the motion.

We have a separate motion that was filed by the Government seeking a *Daubert* hearing, a separate hearing, if I understand it accurately concerning the two opinion witnesses that the defense has identified.

MS. PARKER: That is correct, Your Honor. As I'm sure the Court is well aware, *Daubert* recognizes the Court's gatekeeping function in terms of witness testimony, and while *Daubert* is focused in large part on a scientific evidence, I think it's all the more important to have that gatekeeping function recognized when the testimony, as I understand it, is that the defendant's experts would tender opinions on the law

and the application of the law to information that they believe to be the facts in the case.

And I think that's particularly disconcerting, and there is some case -- there's a case cited in our brief which says that you can't do -- have -- present an opinion witness to say the conduct of a defendant or a party did or did not violate the law, and I think that's the purpose -- one of the purposes, and the other is, frankly, to bolster the testimony of Mr. Pavlik.

And I recognize, and I think this is understood by all of us, that there may be a good faith reliance on the advice of an accountant to some lesser or greater degree that we asserted in this case, but then to bolster the testimony of the accountant by having two or one other witnesses say the accountant was correct, it is particularly problematic, and it really doesn't go to the good faith versus willfulness of the defendant. It goes -- it's an after the fact bolstering, nothing on which the defendant relied in proceeding as he did and signing various tax returns and providing information to tax preparers over a period of time.

So I think there's a particular concern in this case that the misinformation -- the information regarding the law should not be provided to the jury from the witness box in any case, and it's particularly disconcerting in this case, because, as I think the Court's already expressed, it's quite

likely misinformation, and it would be confusing to the jury, could potentially be misused by the jury, and it's really not probative of the issues that are presented to the jury.

THE COURT: The type of case where we run into those types of issues most often are legal malpractice cases where we have to draw a line, if you will, between the decisions that need to be made by the Court in terms of instructing the jury on the law that applies but, on the other hand, permitting the jury to make determinations concerning both duty and breach of duty, and we regularly accept opinion witnesses on the law and particularly with respect to breach of duty in those circumstances.

Is this any different, do you think?

MS. PARKER: Yes, it is, for two different reasons. That is not an issue in this case, whether there's a duty or a breach of duty.

THE COURT: Sure.

MS. PARKER: Second all, this is a criminal case where we're not talking about a preponderance type standard. We're talking where the risk of misleading and misinformation could tip the scales in the direction just enough to basically prevent the jury from finding proof beyond a reasonable doubt, so the margin for error in that regard is -- the impact of error is substantially greater.

And the third thing I would say, and I think this is

of importance, and that's the civil case of malpractice, what's at stake is -- to the parties is different, and in this case if there's an error, there's no remedy for the Government. In a civil case, there is remedy, both parties can appeal, but --

THE COURT: I assume that the civil case and the civil issues for the defendant have probably not come to a conclusion.

MS. PARKER: I'm sorry?

THE COURT: I assume that the civil issues with respect to the Internal Revenue Service and the defendant are not completely resolved.

MS. PARKER: I know, but I think that's a totally different thing, whether or not there's a civil thing, and if that was a civil tax case, then perhaps it would be different, but I would still admit -- or submit to the Court, as to these experts, they are not qualified to offer the opinions that they wish to offer.

THE COURT: And why not? I've taken a look at their CV's. They look like both have masters, as I recall, in fields of both accounting as well as taxation.

MS. PARKER: Well, I think, again, what they're going to offer are legal opinions, and they're not lawyers and they're not the parties. I mean, there's a variety of cases that say, particularly in the criminal cases, ***Zipkin*** is one I've cited, there was another one cited in the brief, that the

Court must provide the law to the jury, and I think this is a line that has to be maintained, otherwise the Court isn't providing particular --

THE COURT: Your draft jury instructions do not include instructions with respect to the application of Section 1331. Should they?

MS. PARKER: Well, we frankly didn't think that this was going to be an issue. I mean, I think the Court has taken the trial in a different path. As you know, our contention is we weren't intending to litigate the propriety of either the theft loss or the claim of right. We were to take the Form 433-F that says he owes $448,880 at his word and not look behind that to other matters. The Court's ruled otherwise, and if the Court wants us to work on an instructions, we would be happy to do that.

We did submit some additional instructions last night, not as to that section, per se, but, I mean, it does address -- the first one does -- we submitted it through utilities, through the -- both the theft loss and the claim of right, and I think that's important because the law on those two tax concepts I think is not -- would not allow the deductions in this case, if -- if you take the facts. There was no theft loss because as the Court's already observed --

THE COURT: And I agree, I understand the argument with respect to the facts there.

MS. PARKER: All right. So to allow the jury to hear testimony that's based on some conclusion that's not consistent with the facts or the law, as even the Court says, the Court recognizes it to be, is to me completely inappropriate. It -- the jury should not be subjected to that, and the only thing they can do with it, it's misinformation and they can misapply it.

And I don't think there's a cautionary instruction that can say you heard him testify, they're wrong, but you heard him testify anyway. I mean, the whole reason that these witnesses are being offered is to bolster the opinion of one of their witnesses, and they're trying to bolster him with misinformation.

THE COURT: Well --

MS. PARKER: It's factually.

THE COURT: -- you'll be available for cross-examination both of the accountant as well as the opinion witnesses.

MS. PARKER: Well, that's definitely true, but that doesn't change the fact it's not relevant, it's not probative, it's unduly confusing to the jury. Because -- I mean, it allows them to bolster the testimony of a witness and to try to say, through how many hours of testimony, that this was a correct thing to do on behalf of the defendant, when the facts don't support it nor do -- and the facts don't support the

legal analysis.

And, fundamentally, to go down the path and say we can offer it just because the Government can cross-examine it, I don't think is a good use of the Court's time. I don't think it's unfair to the defendant to say you can't present testimony that is fundamentally incorrect.

THE COURT: Appreciate your argument. Mr. Minns.

MR. MINNS: Thank you, Your Honor. I -- I'm primarily arguing in the defense of the reputation of two former public servants and two highly educated people because when a *Daubert* motion is filed, every other time they give a deposition, every other time they're called to the witness, it becomes cross-examination, so it's essential for their reputation, and they gave us their good faith. I have to stand by them. They're -- it's essential that the Government lose *this Daubert* motion for the reputation of these two very highly educated, well qualified experts.

The Government put on a series of experts with no qualifications whatsoever, no reports whatsoever, no CV's, and we gave CV's on both of ours. We've actually filed the first record.

So it is important because this creates a legislative history. Each one of these two fine people, when they get on the stand, someone will say, were you challenged, and they need to be able to truthfully testify, it was unsuccessful.

THE COURT: Here's the question I have because, respectfully, while I acknowledge our gatekeeping responsibility under *Daubert*, that doesn't necessarily mean that once that challenge is made that a separate hearing necessarily has to be -- has to occur. That gatekeeping function will continue throughout the course of those witnesses' testimony.

The issue that I would struggle with in this set of circumstances is the extent to which you will be using opinion witnesses to substantiate presumably the reasonableness of the conclusion of the tax preparer on the offer in compromise.

Do we need to go the next step in informing the jury concerning the application of the tax code? Should they be making the determination concerning the reasonableness of the application of the law; and, if not, why are we furnishing them testimony on the question?

MR. MINNS: Well, to shortcut it, Your Honor, because much of it is moot, as the Government said, a major reason for the testimony was to support the testimony of Mr. Pavlik. I've spent a week in Michigan interviewing witnesses, almost none of whom were put on the stand. Mr. Pavlik was not put on the stand. So the reason for that expert to buttress what he is saying to support him is irrelevant, because Mr. Pavlik never took the stand. I don't have anything to buttress.

We don't have any -- to get to the bottom of it, the

Government's motion on this -- it must be denied for the reputation of these two experts who are outstanding, but it's moot, because we're not planning -- at this point there's nothing to refute. I don't -- there was nothing put into the record that would -- that would bring either one of these experts -- my summary witness, there was nothing in their -- in their -- their summary witness didn't even say a tax was due and owing so --

THE COURT: Your client's tax returns did.

MR. MINNS: Yes, Your Honor, that is true, but the summary witness didn't.

THE COURT: And Mr. Pavlik and his opinion is necessary to get you to no tax. Agreed?

MR. MINNS: Yes, Your Honor, absolutely. But -- but I'm not planning on putting either of these -- I do plead with the Court to deny their motion, but I'm not going to put either one of them on the stand. I do that for the reputation of these men, because they both are practicing their tools, and if a *Daubert* motion is granted, it will injure their future. It will slander them.

My understanding is the Court wasn't going in the direction of disqualifying them anyway, but I'm -- this is moot because I am not putting either of these two gentlemen on the stand. I don't have anything to refute. The Government didn't put Mr. Pavlik on the stand. I don't have anything -- I guess

I could theoretically put someone on the stand to support the uncontradicted tax return, but find that to be futile and a waste of time.

THE COURT: The uncontradicted tax return?

MR. MINNS: Yes.

THE COURT: Which one are you referring to?

MR. MINNS: Oh, well, I tried to -- if I was unsuccessful, I apologize to my client and the Court, I tried to contradict the Carol Nathan tax returns, but there was no testimony contradicting any of the other tax returns.

MS. PARKER: Your Honor, if I may. If counsel is stating that he's not calling experts in his case, then the motion is moot.

THE COURT: That's true.

MS. PARKER: And whatever -- I don't think the -- that a motion should be denied on the merits because it might harm the reputation of someone, but we're not seeking to do that. And I think, if he is stating on the record he's not calling the witnesses at issue, then the motion is moot.

THE COURT: And I understand the way the parties are framing the issues.

As I indicated earlier, putting aside the question of whether or not the witnesses are actually called, our gatekeeping responsibility continues nevertheless. And to the extent that there is an issue that could arise, as we see the

way in which the defense is presented, we'll take up those issues, depending on the witnesses that's involved.

We'll proceed to the jury. Are you ready to go?

MR. MINNS: Yes, Your Honor.

THE COURT: If we could have the jury, please.

MS. PARKER: Judge --

THE COURT: Yes.

MS. PARKER: -- I'm sorry, one quick thing since -- rather than shuffle the jury in and out. The Court normally conducts a colloquy with the defendant regarding it being his own decision whether or not to testify.

THE COURT: Certainly. But I don't think we're probably there yet.

MR. MINNS: We probably are there, Your Honor.

THE COURT: All right.

MR. MINNS: We probably are. Counsel refuses to put the client on the witness stand, and the client has been thinking he needs to testify, and he has three lawyers who will not put him on the witness stand. We believe he has agreed with us not to take the witness stand, but it is his constitutional right, and I cannot take it away from him. If I could, I would.

THE COURT: So --

MR. MINNS: It is necessary, Your Honor, and this would be an appropriate time to get it over with.

THE COURT: Mr. Pieron, I'm not exactly clear, is it your decision to furnish testimony to the jury or not?

THE DEFENDANT: It's my decision to take the advice of my counsel. Just as I can't fly an airplane, I don't know what to do in this situation, so I have to take the advice of the pilots around me, if that makes any sense.

THE COURT: Sure. As equivalently I don't fix my own car either. I appreciate your point. But what's important to us at this stage is to make sure that you understand that while taking the advice of your attorneys is sound, at the end of the day, the question of the decision as to whether you furnish testimony or not is yours; and, incidentally, it is a right that's protected on both sides, which is to say that you have an absolute right to furnish testimony if you choose to do so. But, equivalently, we -- if you choose not to do so, we will furnish the jury with a fairly specific instruction and indicating that you have an absolute right not to testify and they cannot draw any inferences concerning your guilt or innocence as a result of your election in that -- in making that decision.

So to be sure at this stage, you've -- it's an issue that you've reviewed with your attorneys with care, correct?

THE DEFENDANT: Yes, sir.

THE COURT: And you're satisfied at this stage that in choosing not to furnish your testimony, it would be a well

educated and sound decision and it's a decision that you have made personally?

THE DEFENDANT: Well, I just finalized my decision with your own words, that it's a sound decision, and I've watched a week of critical thinking from the Court and your words, I think, are the right ones, the right decision.

THE COURT: You've made that decision yourself.

THE DEFENDANT: Yes, sir.

THE COURT: Good. You're leaving me with a little bit of a question about where the defendant's case will be going. Do you have other witnesses?

MR. MINNS: No, Your Honor.

THE COURT: Oh, so you're full of surprises.

MR. MINNS: We struggled with this all night, with the Government's threats to deal with this -- this Cook situation and all the other things, and we went back and forth, and we spent a lot of time and effort prepping six witnesses, and the decision that we made, and is now finalized, would have been whether Jim Pieron went against our advice and took the stand, so at this point in time, we will be resting.

THE COURT: May I suggest that what we do is have both of you rest in front of the jury, excuse the jury for about an hour and a half, resolve the final jury instructions and have them back for closing arguments?

MR. MINNS: Excellent, Your Honor.

THE COURT: Agreeable to the Government?

MS. PARKER: Judge, we have not seen a draft at all of the jury instructions, other than the ones that were -- that we submitted and were submitted by the defense. We did, again, I would reiterate, submit a couple supplemental ones last night.

THE COURT: I don't think that the conference is going to be extensive. I think we're going to reach conclusions on those instructions pretty rapidly. All right. We'll entertain the jury to permit both the Government and defense to rest, and to provide them some instructions on when they need to be back in attendance. What I'm anticipating would be back at 10:30?

MS. ARNETT: For the jury to come back, I understand?

THE COURT: Good. Jury, please.

(At 8:51 a.m., jury arrives.)

THE COURT: Good morning.

THE JURY: Good morning.

THE COURT: Please be seated. Government have any additional witnesses to call?

MS. PARKER: No, Your Honor. I would like to go over the exhibit list with the Court, but the Government has no additional witnesses and the Government rests.

THE COURT: Does the defense wish to introduce any evidence?

MR. MINNS: No, Your Honor.

THE COURT: The defense rests?

MR. MINNS: Yes, Your Honor.

THE COURT: That leaves us with the next step in the case being our instructions to you and the law that governs the case and that will govern your decision making. We need to spend a little bit more time finalizing some of those instructions that we will give you. After that, we'll entertain the closing statements from the attorneys and the case will be yours.

Because we need a little bit of time on the instructions, what we were going to do is just simply release you for a period of time while we resolve that. We were thinking having you back at 10:30, at which point we will provide you the instructions that govern the case and go directly into closing arguments.

Does that create any logistical problems for the jury? You'd be free to go until 10:30. And the -- she was just reminding me to remind you that once you are in deliberations, we will continue until you reach or verdict or 5:00; if you don't reach a verdict, we'll have you back in the morning for coffee.

Any logistical problems with that outline from any members of the jury? Good. Where did Mr. Haines go?

(At 8:53 a.m., jury leaves.)

THE COURT: We are outside of the presence of the jury. About five minutes, and we'll meet in chambers and see if we can get our instructions ironed out. Is that agreeable?

MS. PARKER: Yes, Your Honor.

MR. MINNS: Your Honor?

THE COURT: Sir?

MR. MINNS: May I have permission to begin working on my opening --

MS. ARNETT: Closing.

MR. MINNS: -- and have Ashley and Ken handle the instructions, and will we have instructions so that I can use -- quickly enough so that I can work them into my closing?

THE COURT: Yes. I don't think that will be a problem.

MR. MINNS: Okay. Thank you, Your Honor. So we get a copy of the instructions?

THE COURT: Yes. You will have more than one.

MR. MINNS: Okay. Thank you, Your Honor. I apologize, I'm -- I'm -- I need to spend some time going over my notes.

THE COURT: Sure.

MR. MINNS: Thank you, Your Honor.

THE COURT: We'll see you in chambers in about five minutes.

(At 8:55 a.m., court recessed.)

THE COURT: Record will reflect the fact we are outside the presence of the jury. We have had a chance to meet in chambers, to finalize instructions. Those have been completed and are available to the jury.

What I'd like to do at this juncture is to provide you an opportunity to create a record on any differences of opinion concerning the instructions.

Ms. Parker, would you like to begin.

MS. PARKER: Yes, Your Honor. One of the discussions that we had in chambers was regarding the good faith instruction that was both proposed by the defense and modified by the Government. The Government objects to the giving of that instruction for the reason that there really is no evidence regarding the defendant's good faith one way or another, that could be relied upon the jury in applying that defense to the defendant's conduct.

And the problem with giving that instruction, in light of the fact that there really is no evidence of the good faith reliance of the defendant, is that the Government cannot comment on the defendant's lack of presentation of proofs.

THE COURT: At trial.

MS. PARKER: At trial. And this is, you know, where I would be in a position of trying to explain to the jury that there's no evidence that the defendant relied on an accountant or professional tax advisor if you find he's made a full

disclosure of the facts to the accountant or advisor. I would want to argue there's no evidence of full disclosure; and, frankly, I can't argue that, I believe. I think if I -- if the defense wants this instruction, it's basically forcing me into a position of doing what I know I ought not to do.

THE COURT: We've spent sometime with this, and it seems to me that we have to draw a distinction between the defendant's right not to testify, but his obligation to furnish full disclosure to the CPA as a condition of his entitlement to rely on that information. I don't see any particular problem with your focused attention on the lack of full disclosure to his accountant based on the inconsistency of the factual information.

MS. PARKER: Well, I think, Your Honor, that the Government has the burden of proving willfulness, and willfulness is the antithesis of good faith, and if we prove evidence -- or present evidence proving willfulness to the satisfaction of the jury, that would be an absence of good faith. But to say that there is good faith reliance when there is no evidence on that, no evidence on full disclosure, and because there simply has been no presentation on that issue, is to really give the defendant more than he's entitled to.

He is entitled to have the Government prove willfulness beyond a reasonable doubt, but he's not entitled to force the Government to prove a defense and then point to the

Government's, you know -- put us in that trick box of saying, well, you didn't negate the defense that we didn't present.

THE COURT: Well, the trick box has one other aspect to it and that is that there's two parties to the preparation of the return, that is the accountant and the defendant. The defendant can exercise his Fifth Amendment right with respect to trial. The one other party who could have been called by either party, either the Government or the defense, there was an election not to call.

MS. PARKER: That is true, but that wouldn't -- even if the accountant had been called, I don't think that would be addressing the concern because whether the accountant -- if he believes he had the information he needed, that's not the same as saying I had full disclosure. I had the same information that he gave the other accountants, I had things of that nature. And to me, they -- as the Court's pointed out, the defense also could have called the accountant.

THE COURT: Sure.

MS. PARKER: They elected not to do so. They had that ability, but I can't point out they could have called him, too. That's my problem.

THE COURT: Well, we're at a point where I want to take the defense's response to that, because the ruling with respect to the instruction is fairly critical to the ruling that we will make concerning the arguments that can be advanced

in closing arguments.

Now, while the Government cannot comment on the defendant's election not to testify, they are, in my view, entitled to suggest or to argue factually concerning the lack of evidence of full disclosure to the accountant.

MR. MINNS: Mr. Sasse will address this, but I do have something that -- I apologize, I just have something to put in here. I find it -- that the Government -- I find it astounding that the Government did not call Mr. Pavlik. All the conversations were between Mr. Pavlik and our client.

For me -- for the Government to say that I could have put on witnesses that would have helped them prove up their case is astonishing. That's not the burden on me at all or on defense. They chose not to put Mr. Pavlik on the stand, so the record doesn't talk about what happened between the two of them. I was unprepared for the witness that came on. I was expecting Mr. Pavlik to be put on the stand. And for them to claim surprise that they didn't call the witness preparing the return, I interviewed Mr. Pavlik twice; they interviewed him four times, so -- I should stop?

MS. ARNETT: I said five.

MR. MINNS: They interviewed him five times. I interviewed him twice. I didn't interview the witness that actually took the stand because I did not -- I thought -- they had a burden -- if they want to dispute the evidence of the tax

return, they have a burden of -- we don't have the positive burden of showing that we gave everything or that the accountant didn't or whatever. They have the burden of just proving anything -- they have the burden of proving everything, and they chose to abandon that burden, and I chose not to put him on to open the door.

THE COURT: Well, the conundrum arises from the fact that the initial obligation by law of any taxpayer is to make full disclosure to any assistant, and we have to square that with the Fifth Amendment in the context of a tax evasion case. It's -- that's the line that we have to draw here that is even more interesting given the absence of the preparer's testimony.

So we've crafted the instruction as best we can to draw that distinction, and you have our best efforts at accomplishing that in the instruction.

Now, there was one additional instruction that we also included that Mr. Sasse had an objection on.

MR. SASSE: The conduct of the -- standards of conduct for the IRS instruction, is that what you --

THE COURT: Yes.

MR. SASSE: Yes, Your Honor. We are objecting to that instruction. It tells the jury or reminds the jury that there were -- has been testimony, we think an exhibit, introduced with respect to the Taxpayer Bill of Rights, and then tells them that there's a litany of other laws and stuff,

which may -- that they should also consider.

Well, the problem is that there's been no -- virtually no evidence in this case as to why any of these other laws, if they do exist, would have prevented the IRS from giving this man the rights that he was supposedly guaranteed under the Taxpayer Bill of Rights, and I think this instruction is inappropriate in the facts of this case.

THE COURT: And the instruction is being given to the jury so as to be sure they understand that in addition to the Taxpayer's Bill of Rights, there is also an Internal Revenue Code with many other associated provisions. It's important that they understand that in context, in my view.

MR. MINNS: May I -- I'm leaving this in my capable hands, may I use the restroom and not stop this proceeding.

THE COURT: Certainly.

MS. PARKER: Wait, I think it's important that Mr. Minns be here for what I have to say.

THE COURT: But it's also important that he's in the bathroom.

MR. TURKELSON: I understand that, but --

(Brief pause.)

MR. SASSE: Your Honor, there was another objection we had that Mr. Minns probably doesn't have to be here.

THE COURT: Yes.

MR. SASSE: We had an objection to the Court's not

including an instructions on the statute of limitations, and we had submitted pretrial a defendant's proposed instruction No. 1 which addressed this, and it argued that the jury should be instructed that they must find an affirmative act of evasion within what would be the six year period plus actually it's greater than six year because --

THE COURT: Six years plus the tolling.

MR. SASSE: And I would, again, urge the Court to give that instruction. I think it's -- he does have statute of limitations protections, and that that would assure the jury consider that.

THE COURT: Quickly, Government?

MS. PARKER: Well, Your Honor, the Government submits that there is evidence in the record that would allow the jury to find that. There wasn't really any bringing of that issue to their attention in the defendant's opening statements, and then to -- I don't think it's necessary under the record in this case, especially since it really hasn't been a litigated issue, and now ask the jury to go back and think about the evidence in light of a question that was never made known to them that they were going to have to consider. To throw that out as a jury instructions at this point, I think there has to be factual -- a different factual predicate for giving the instruction.

THE COURT: And, respectfully, I do not understand

there to be disputes of fact concerning events as outlined in the bill of particulars that would have been within -- actionable within the statute of limitations, and for that reason, I've elected not to furnish that instruction to the jury.

We want to finish up with Mr. Minns' presence, and the record will reflect his returning, with respect to the one issue that --

MS. PARKER: Actually there are three issues. I believe they'll be quick. One, we have a dispute regarding whether the Taxpayer Bill of Rights was admitted as an exhibit, and I understand third hand, but I hope it's reliable hearsay, that the court reporter cannot find in her records that the Taxpayer Bill of Rights was admitted as an exhibit. That is my recall and the recall of people at counsel table, but I understand there's a dispute, and I think that has to be clarified before closing arguments are made and making reference to something that's not in evidence. I'd rather not object to that.

In the same vein, there's a chart that was used in opening, and I understand it's over there. I would object to Mr. Minns using it, because it isn't based on the evidence that was presented in this case.

And, thirdly, and lastly, I'd just like to bring to the attention of Mr. Minns the Sixth Circuit case in *United*

States versus Blakemore, 489 Fed2d 193, which essentially says that counsel cannot make reference or argue the absence of a witness in closing argument without obtaining the permission of the Court and sets the standards for doing that. I don't want to object to a missing witness argument. I'd rather make him aware of it and hopefully he governs himself accordingly.

MR. MINNS: Am I precluded from talking about Mr. Hollabaugh who was injected throughout this trial and every meeting? Am I precluded from discussing him?

THE COURT: You're precluded from discussing the absence of any witness.

MR. MINNS: Okay. I can -- I can say that there's been no witness to testify to X, Y or Z that was required to prove from the Government though?

THE COURT: In a similar fashion.

MR. MINNS: And I do intend to use the chart unless the Court orders me not to. I've always --

THE COURT: My notes -- my notes reflected the fact that we introduced the Taxpayer Bill of Rights; apparently not particularly clearly.

And I don't have any objection to your using that as demonstrative evidence, but I will instruct the jury that in considering any demonstrative evidence, it's necessary that they evaluate the accuracy of that information based on their evaluation of the facts.

MR. MINNS: My timeline, Your Honor, I've always used one to close and open with, and the Government has said -- has objected to it. I don't understand why. Most of everything I was going to go through it and show the things that were specifically proven up by different witnesses in the trial.

THE COURT: Sure.

MS. PARKER: Well, I object to using something that's not in evidence and consistent with the evidence. If the timeline was supported by the evidence, I would have no objection, but --

THE COURT: And we're going to -- we're going to tell the jury that it's demonstrative information. It is not in evidence, and it's -- its use should be governed by their understanding of the facts during trial.

MS. PARKER: It's also argumentative. I mean, it says --

MR. MINNS: This is argument.

MS. PARKER: I mean, I know it's argumentative, but a summary of a timeline shouldn't be -- it should be a sequence of events, not argument, but --

THE COURT: The gentleman may use it.

We have the instructions. They are available for the jury. My intention at this juncture would be to entertain them and then proceed to instructions and the Government's closing argument; probably take a break after that, return for the

defense argument and rebuttal.

MR. MINNS: Thank you, Your Honor. Thank you.

THE COURT: If we could have the jury, please.

MR. MINNS: Your Honor, in this court, we are permitted to read directly from the instructions?

THE COURT: Yes.

MR. MINNS: Thank you.

THE COURT: They will have a copy of them as well.

MR. MINNS: Okay. It changes from -- some judges say don't do it until afterwards, and --

(At 10:57 a.m., jury arrives.)

THE COURT: Welcome back. You will note that there is a copy of the instructions on your seat. I point that out so you don't sit on them, but you may be seated. And I apologize for the fact that it took us a little bit longer than we had anticipated to resolve a few issues that we needed to do without -- outside of your presence.

I'm going to be furnishing you, reading essentially, the instructions that you have in front of you. You will be able to maintain these instructions during deliberation and you're free to follow along as we furnish the instructions.

Members of the jury, now is the time for me to instruct you about the law that you must follow in deciding the case. I will start by explaining your duties and the general rules that apply in every criminal case. Then I will explain

some rules that you must follow in evaluating particular testimony and evidence. Then I will explain the elements or parts of the crime that the defendant is accused of committing, and, last, I will explain the rules that you must follow during your deliberations in the jury room and the possible verdicts that you may return.

Please listen carefully to everything I say. I have given each of you a copy of the instructions for your use while deliberating. They are available to each of you. If you have questions about the law or your duties as jurors, you should consult the copy of the instructions as given to you.

You have two main duties as jurors. The first one is to decide what the facts are from the evidence that you saw and heard here in court. Deciding what the facts are is your job. It's not mine, and nothing that I've said or done during the trial was intended or meant to influence your decision about the facts in anyway.

Your second duty is to take the law that I give you, apply it to the facts, and decide if the Government has proved the defendant guilty beyond a reasonable doubt. It's my job to instruct you about the law, and you are bound by the oath that you took at the beginning of the trial to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions that I gave you before and during the trial and these instructions that I am

now providing. All the instructions are important, and you should consider them together as a whole.

The lawyers may talk about the law during their arguments, but if what they said is different from what I say, you must follow what I say. What I say about the law controls. Perform these duties fairly. Do not let any bias, sympathy or prejudice that you may feel towards one side or the other influence your decision in anyway.

As you know, the defendant has pled not guilty to the crime charged in the indictment. The indictment is not any evidence at all of guilt. It is just the formal way that the Government tells the defendant what crime he is accused of committing. It does not raise any suspicion of guilt.

Instead, the defendant starts the trial with a clean slate with no evidence at all against him, and the law presumes that he is innocent. This presumption of innocence stays with him unless the Government presents evidence here in court that overcomes the presumption and convinces you beyond a reasonable doubt that he is guilty.

This means that the defendant has no obligation to present any evidence at all or to prove to you in anyway that he is innocent. It is up to the Government to prove that he is guilty, and this burden stays on the Government from start to finish. You must find the defendant not guilty unless the Government convinces you beyond a reasonable doubt that he is

guilty.

The Government must prove every element of the crime charged beyond a reasonable doubt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt. Possible doubts or doubts based purely on speculation are not reasonable doubts. A reasonable doubt is a doubt based on reason and common sense. It may arise from the evidence, the lack of evidence or the nature of the evidence. Proof beyond a reasonable doubt means proof which is so convincing that you would not hesitate to rely and act on it in making the most important decisions in your own lives.

If you are convinced that the Government has proved the defendant guilty beyond a reasonable doubt, say so by returning a guilty verdict. If you're not convinced, say so by returning a not guilty verdict.

If you decide that the Government has proved the defendant guilty, then it will be my job to decide what the appropriate punishment should be. Deciding what the punishment should be is my job; it is not yours. It would violate your oath as jurors to even consider the possible penalty in deciding your verdict. Your job is to look at the evidence and decide if the Government has proved the defendant guilty beyond a reasonable doubt.

You must make your decision based only on the evidence that you saw and heard here in court. Do not let

rumors, suspicions or anything else that you may have seen or heard outside of the court influence your decision in anyway. The evidence in this case includes only what the witnesses said while they were testifying under oath, and the exhibits that have been allowed into evidence. Nothing else is evidence. The lawyers' statements and arguments are not evidence. Their questions and objections are not evidence, and my legal rulings are not evidence, and my comments and questions are also not evidence.

During the trial, I did not let you hear the answers to some questions that the lawyers asked, and sometimes I ordered you to disregard things that you saw or heard or I struck things from the record. You must completely ignore all of these things. Do not even think about them. Do not speculate about what a witness might have said. These things are not evidence and you are bound by your oath not to let them influence your decision in anyway. Make your decision based only on the evidence as I've defined it here and nothing else.

You are to consider only the evidence in the case. You should use your common sense in weighing the evidence. Consider the evidence in light of your everyday experience with people and events, and give it whatever weight you believe it deserves. If your experience tells you that certain evidence reasonably leads to a conclusion, you are free to reach that conclusion.

In our lives we often look at one fact and conclude from it that another fact exists. In law we call this an inference. The jury is allowed to make reasonable inferences unless otherwise instructed. Any inferences you make must be reasonable and must be based on the evidence in the case. The existence of an inference does not change or shift the burden of proof from the Government to the defendant.

Some of you have heard the terms direct evidence and circumstantial evidence. Indeed you would have heard those terms when we began the case. Direct evidence is simply evidence, like the testimony of an eyewitness, which, if you believe it, directly proves a fact. If a witness testified that he saw it raining outside and you believed him, that would be test -- that would be direct evidence that it was raining.

Circumstantial evidence is simply a chain of circumstances that indirectly proves a fact. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

It is your job to decide how much weight to give the direct and circumstantial evidence. The law makes no distinction between the weight that you should give to either one and does not say that one is any better evidence than the other. You should consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it

deserves.

Another part of your job as jurors is to decide how credible or believable each witness was. This is your job; it's not mine. It is up to you to decide if a witness's testimony was believable and how much weight you think it deserves. You are free to believe everything that a witness said or only part of it or none of it at all, but you should act reasonably and carefully in making these decisions. Let me suggest to you a few things that you may consider in evaluating each witness's testimony.

Ask yourself if the witness was able to clearly see or hear the events. Sometimes even an honest witness may not have been able to see or hear what is happening and may make a mistake. Ask yourself how good the witness's memory seemed to be. Did the witness seem able to accurately remember what happened? Ask yourself if there was anything else that may have interfered with the witness's ability to perceive or remember the events.

Ask yourself how the witness acted while testifying. Did the witness appear honest, or did the witness appear to be lying? Ask yourself if the witness had any relationship to the Government or the defendant or anything to gain or lose from the case that might influence the witness's testimony. Ask yourself if the witness had any bias or prejudice or reason for testifying that might cause the witness to lie or to slant the

testimony in favor of one side or the other.

Ask yourself if the witness testified inconsistently while on the witness stand, or if the witness said or did something, or failed to say or do something, at any other time that is inconsistent with what the witness said while testifying. If you believe the witness was inconsistent, ask yourself if this makes the witness's testimony less believable. Sometimes it may; other times it may not. Consider what the inconsist -- consider whether the inconsistency was about something important or about some unimportant detail.

Ask yourself if it seemed like an innocent mistake or if it seemed deliberate, and ask yourself how believable the witness's testimony was in light of all the other evidence. Was the witnesses' testimony supported or contradicted by other evidence that you found believable? If you believe that a witness's testimony was contradicted by other evidence, remember that people see -- sometimes forget things and that even two honest people who witness the same event may not describe it exactly the same way.

These are only some of the things that you may consider in deciding how believable each witness was. You may also consider other things that you think shed some light on the witness's believability. Use your common sense and your everyday experience in dealing with other people, and then decide what testimony you believe and how much weight you think

it deserves.

A defendant has an absolute right not to testify or present evidence. The fact that he did not testify or present any evidence may not -- cannot be considered by you in anyway. Do not even discuss it in your deliberations. Remember that it is up to the Government to prove the defendant guilty beyond a reasonable doubt. It is not up to the defendant to prove that he is innocent.

You've heard testimony from witnesses who are police officers or agents. That testimony is to be judged by the same standards you use to evaluate the testimony of any other witness. You've also heard the testimony of Robert Miller, Judith Gustafson and Megean Giolitti.

MS. PARKER: Giolitti.

THE COURT: We all know who we're talking about -- who testified as opinion witnesses. You do not have to accept their opinions. In deciding how much weight to give to opinion testimony, you should consider the opinion witness's qualifications and how the witness reached his or her conclusions. Also consider the other factors discussed in these instructions for weighing the credibility of witnesses. Remember that you alone decide how much of a witnesses's testimony to believe and how much weight you believe it deserves.

Another point about the witnesses, sometimes jurors

wonder if the number of witnesses who testified makes any difference. Do not make any decisions based only on the number of witnesses who testified. What is important is how believable the witnesses were and how much weight you think their testimony deserves. Concentrate on that, not on the evidence.

During the trial, you have seen or heard summary evidence in the form of charts, calculations, testimony or similar material. The summary was admitted into evidence in addition to the material -- material it summarizes because it may assist you in understanding the evidence that has been presented, but the summary itself should not -- is not evidence of the material it summarizes, and it is only as valid and reliable as the underlying material it summarizes.

On a related point, and I'm departing from the materials in front of you right now. I am going to permit the attorneys in closing arguments to use what we would refer to as demonstrative exhibits. They're summary materials that they have presented, and it's not admitted into evidence. What I want you to clearly understand is that information in that demonstrative materials is to be evaluated by you viewed against the evidence. It's the ultimate -- ultimately the evidence admitted during the course of the trial that is the governing information, not necessarily the lawyers' summary of that material. So please remember that in considering the

demonstrative evidence that they may use in closing arguments.

The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case or who may appear to have some knowledge of the matters in issue at the trial, nor does the law require any party to produce as exhibits all papers and things mentioned in the evidence in the case.

It has been brought out that an attorney has talked with a witness. There's nothing wrong with an attorney or agent talking with a witness for the purpose of learning what the witness knows about the case and what testimony the witness will give.

There's one more general subject that I'd like to talk to you about before I begin explaining the elements of the crime charged. The lawyers for both sides have objected to some things they were said or done during the trial. Do not hold that against either side. The lawyers have a duty to object whenever they think that something is not permitted by the Rules of Evidence. Those rules are designed to make sure that both sides receive a fair trial.

Do not interpret my rulings on their objections as any indication of how I think the case should be decided. My rulings were based on the Rules of Evidence, not on how I feel about the case. Remember that your decision must be based only on the evidence that you saw and heard here in court.

That concludes the part of my instructions explaining your duties and the general rules that apply in every criminal case. In a moment, I will explain the elements of the crime charged, the crime that the defendant is accused of committing.

Before I do that, I want to emphasize that the defendant is only on trial for the particular crime charged in the indictment. Your job is limited to deciding whether the Government has proved the crime charged. Also keep in mind that whatever -- whether anyone else should be prosecuted and convicted of the crime charged is not a proper matter for you to consider. The possible guilt of others is no defense to a criminal charge. Your job is to decide if the Government has proved the defendant guilty. Do not let the possible guilt of others influence you in any other -- in anyway.

The indictment charges that from approximately April of 2009 and continuing through July 18 of 2018, James D. Pieron, Jr. willfully attempted to evade and defeat the payment of the income taxes due and owing by him to the United States for the calendars years 2008 and 2009, in violation of federal law.

For you to find the defendant guilty of attempting to evade and defeat the payment of income taxes for the years 2008 and 2009. The Government must prove each of the following elements beyond a reasonable doubt:

First, that income tax was due from defendant.

Second, the defendant committed an affirmative act constituting an evasion or attempt to evade or defeat his tax obligation.

Third, in evading or attempting to evade or defeat his tax obligation, the defendant acted willfully.

Any conduct that is likely to have a misleading or concealing effect, such as hiding assets, covering up sources of income, or handling ones affairs using means designed to avoid creating the usual type of records of one's financial transactions and any conduct the likely effect of which would be to mislead or conceal can constitute an affirmative act. A lawful act can serve as an affirmative act if it is done with the intent to evade income tax.

And act or failure to act is willful for purposes of tax evasion if it is a voluntary intentional violation of a known legal duty rather than the result of an accident, mistake or negligence.

If you're convinced that the Government has proved all of the elements, say so by returning a guilty verdict. If you have a reasonable doubt about any one of these elements, then you must find the defendant not guilty.

During the trial, you've heard references to a law that has been referred to or called the Taxpayer Bill of Rights. That's not the only law that governs the conduct of the Internal Revenue Service and it's personnel. IRS personnel

must also comply with laws governing the conduct of criminal investigations, including laws governing the secrecy of criminal investigations, ethical rules regarding contact with people who are represented by a lawyer, and also the constitutional right of a defendant to be protected from compelled self-incrimination.

I say this to you not because you need to understand and apply the different standards in arriving at a verdict in this case, but because it is fair that you know that different standards apply to the conduct of the Internal Revenue Service in different contexts.

The good faith of the defendant, Mr. Pieron, is a defense to the tax charge in Count One of the indictment because good faith is simply inconsistent with willfully attempting to evade or defeat any tax. While the term "good faith" has no precise definition, it means, among other things, an honest belief, a lack of malice, and the intent to perform all lawful obligations.

In assessing the defendant's good faith, you may consider his reliance on an accountant or professional tax advisor if you find that he has made a full disclosures of the facts to the accountant for advisor.

Next, I want to explain something about proving the defendant's state of mind. Ordinarily there is no way that a defendant's state of mind can be proved directly because no one

can read another person's mind and tell what that person is thinking, but a defendant's state of mind can be proved indirectly from the surrounding circumstances. This includes things like what the defendant said, what the defendant did, how the defendant acted, and any other facts or circumstances in evidence that show what was in a defendant's mind.

You may also consider the natural and probable results of any acts that the defendant knowingly did or did not do and whether it is reasonable to conclude that the defendant intended those results. This, of course, is all for you to decide.

Shortly, we will hear the closing arguments of the attorneys. Please pay attention to the arguments, but remember that the closing arguments are not evidence. They are only intended to assist you in understanding the evidence and the theory of each party. You must base your decision only on the evidence.

Let me finish up by repeating something that I said to you earlier. Nothing that I have said or done during the trial was meant to influence your decision in anyway. You decide for yourselves if the Government has proved the defendant guilty beyond a reasonable doubt.

We will complete the balance of the instructions after the closing arguments from counsel.

Any additions or corrections, Government?

MS. PARKER: Apparently, yes.

THE COURT: Sorry.

MS. PARKER: Yes.

MR. DEPORRE: Just one brief one. Regarding the instruction on the number of witnesses, the last sentence I think was misspoke, and it should not concentrate on the -- how important -- I think you misstated, when you said concentrate on that not the "evidence," and it should be not the "numbers."

THE COURT: Indeed.

Any other additions or corrections?

MR. MINNS: No, Your Honor.

MS. PARKER: Could we have one quick sidebar point of clarification?

THE COURT: Yes.

(Sidebar conference as follows:)

MS. PARKER: I may have been focusing on something else, did you set a time parameter for closings?

THE COURT: I have not.

MS. PARKER: Okay. I just didn't want to be --

THE COURT: I'm anticipating they wouldn't exceed an hour.

MR. MINNS: I'd be surprised if I did.

MS. PARKER: I don't think mine will either, I just wanted to --

THE COURT: What if I tell you when you get to 50

minutes.

MR. MINNS: If that's the Court's ruling.

THE COURT: Okay. We'll do that.

MR. MINNS: So we will have a 10 minute warning?

THE COURT: Yeah.

MS. PARKER: And then I just didn't hear right, did you say that the Bill of Rights exhibit is in?

THE COURT: Is in.

MS. PARKER: Okay. Just wanted to --

THE COURT: Okay. Thanks.

(Sidebar conference concluded.)

THE COURT: Okay. Entertain closing statement on behalf of the Government.

MS. PARKER: Thank you, Your Honor. First let me begin by thanking you for your attendance and also your attention throughout this trial. I know that tax cases are not always the most juicy cases, but somebody has to do them, and I appreciate your undertaking in that regard.

As the Court has already indicated to you, deliberations are soon to begin in this case, and you've heard most of the Court's instructions on the law that you must use in deciding this case. I'm not going to reread the law to you. You've got it in front of you. The Court's given it to you. I would only take on the risk of not reading it correctly, so I'm not going to do that, but you must use that law that the Court

has given you and will give you in deciding this case.

I ask you to keep in mind the instructions that says that the statements of counsel are not evidence. This is true for everything I say, for anything that was said in opening statements, anything that's about to be said in closing statements, and things that were said in -- during the course of the trial.

The statements of counsel, no matter which attorney, simply are not evidence. That includes, as the Court's already mentioned, various charts or things like that that might be used, and I anticipate Mr. Minns is going to be using that timeline chart he showed you in opening during his closing argument.

But if there's anything on that chart, and I submit that there are things on that chart that are not part of the evidence, it's your job to disregard them in order to comply with the Court's instructions, because that chart's not evidence and Mr. Minns' statements about it or my statements about it are not evidence.

So let's get down to what is the evidence. The evidence shows that the defendant, James D. Pieron, had income in 2008 and 2009, and that he evading paying the federal income tax on that income for years. It took him literally until 2018 to pay what he owed for 2008 and 2009. And it took Mr. Pieron leaving -- learning, excuse me, that he was about to be charged

criminally for a tax offense to get him to pay that tax, those taxes he owed for 2008 and 2009.

And he apparently thinks he can write a couple of checks and make the charge go away, but what those checks show you, ladies and gentlemen, those two big checks he wrote in 2018, shows that he had the money, he could have paid his taxes all along, but he chose not to because he was evading the payment until he thought paying might get him out of where he is today.

There really is no dispute over a few certain facts in this case. It is undisputed that Mr. Pieron lived in and ran big dollar businesses in Switzerland for several years before 2009. He handled huge sums of money, and he was the sole owner of multiple businesses. Sometime in 2009, it's not clearly established when, he decides to come back to the United States and live in Michigan.

And he sends various wire transfers of money to move his money from his various European bank accounts to the United States. Almost all the money goes into his business accounts, not his personal accounts, but he has control over both, both his business accounts and his personal accounts.

Mr. Pieron can use those business accounts to buy luxury items for himself. Two, count them, two, Mercedes Benz SUVs, each costing over $100,000. The company he owns buys those cars, paid in full, but he gets to drive them.

Mr. Pieron makes a decision to use money that he could have used to pay his federal income taxes and instead loans -- and I put that in quotes -- money to his companies and has his companies buy things for him.

Exhibit 134, you'll look at that. That shows some of the money that is going between the accounts, a $100,000 wire transfer loan to Komplique. He loans the money to the company, the company buys him a car.

Now, I submit to you, ladies and gentlemen, that purchase of that car was a choice he made to buy the car rather than to pay taxes. It's not a necessary expense, look around you. There are millions of us Michiganders managing to live and do business without $100,000 plus Mercedes Benz SUV, and we manage to survive, manage to thrive. Most of us go our whole lives without even riding in a Mercedes Benz car much less have the use of one provided to us by our company that we own.

Oh, but when Mr. Pieron gives the IRS a list of his assets in 2012, and in 2014, Exhibits 45 and 47, he does not list any Mercedes Benz. Of course not. The Mercedes Benz is not titled in his name. The 2009 one which he owned when he filled out that first form, it's entitled to Komplique, and when he fills out the second form, he has a 2013 Mercedes Benz, but that one's entitled to Kresent, another company. I believe it said on that return he owned 99.995 or something percent of that business.

Now, ladies and gentlemen, that shows you his tax sophistication. He structured that transaction that way. He loaned the money to the company, and has the company buy him the cars. He knows exactly what he's doing. Think about it. Could have not loaned the money to the company, bought the car, it would have cost the same, but, no. He puts the money into the company, whichever one we're talking about, and has the company buy the car, so the asset isn't his. So that when he fills out a form, he says, well, I don't have to list that. All I have to list is the other car, because those things are titled to the company.

From that, ladies and gentlemen, you see much of the defendant's willfulness, his lack of good faith dealing. Because he's making the decision to divert resources that he could use to pay his taxes to instead buying a car and titling it to his company.

And, again, he owns those companies. He owns 100 percent of Komplique, and all but the minutest fraction of Kresent. And as you've heard, Komplique winds up going out of business. It loses money under him, Mr. Pieron's ownership and management, but it still has money to spend on Mr. Pieron, buying him things like -- not just that car, but other things you saw. You saw two checks going to piano company, Central Michigan Piano. Two pianos? Or what else? I mean, these were thousands of dollars that go to Central Michigan Piano for

Komplique. Komplique can't play a piano, but it bought one, with the money that Mr. Pieron loans to the company and gets the company to buy things for him, because he's in charge. He manages it. He owns it.

But Mr. Pieron tells Komplique [sic] that the IRS [sic] is not worth much. He doesn't tell the IRS it would be worth a lot more if it didn't spend money on Mercedes Benzes and presumably gas insurance but all these other things, and you see -- we showed you several checks for different expenditures. But Mr. Pieron does tell the IRS he owns a Volkswagen, it's VW, on the form.

Now, remember, however, how he got the money for that Volkswagen. That came out of Komplique, too. He used -- we had Mr. Parker on the stand. He took money out of one Komplique account, the 39,000 and whatever to -- in cash and used that to buy a cashier's check, and he used that cashier's check, which is if you look at Exhibits 174 and 133, he uses the cashier's check to pay off that car, because he can.

Komplique and their other bank accounts are just his additional bank accounts, but he knows his name's not on them, so it makes it hard for the IRS to go after those assets. And he gets a car paid in full. Notice that Mr. Pieron never finances anything. All of his stuff is paid in full. Must be nice, but you can do that if you've got all this money and you're not paying taxes on it. You can do that. Why bother to

take out a loan to buy a car, if you can just shuffle the money through the bank account and magically it comes out as your own car free and clear.

Now, Mr. Pieron wants you to think perhaps that he's doing business running the technical side of things, and he doesn't have time to figure out his tax obligations. Well, the way he structures these transactions tell you he's figured it out. He's figured it out to a T. He knows what he's doing, and what he's doing is making sure he's not paying year after year after year what he owes to the IRS, particularly for 2008 and 2009. His manipulation of his affairs tells you he does know what he's doing and what he's doing is evading taxes. He's hiding his money in his various businesses and, again, arranging for those businesses to buy things for him.

There are others exhibits. He loans, Mr. Pieron that is, loans IB Technical, one of his businesses, $750,000, which is Exhibit 129. IB Tech is a company that supposedly develops software. So if you look at Exhibit 104, why does a software company pay $18,000 to a piano company? Why? Because Mr. Pieron has it figured out, how to get these things done, get what he wants, and put it off on a technical -- on his companies.

That's not the only check to the piano company. As I said before, there are thousands of dollars -- Exhibit 132, Komplique also pays $20,000 to that same piano company. All

written off business expenses. But the taxes that Mr. Pieron owes for 2008 and 2009, he can wait to pay those.

Take a look at Exhibit 121C, and when you get into the jury room, you'll have a chance to look at these exhibits. They'll be sent in with you. That's a bank statement for Komplique. Look at the February and March entries. See payments to Flickinger's -- I'm going to destroy that, I think it's F-L-I-C-K-I-N-G-E-R Wines. $16,000 in February or March for wines. It's a shell game. Takes money into his accounts, buys things -- these business account, buys things for himself. And doesn't pay his taxes.

He loans IB Tech large sums of money. He takes out $350,000. If you look at Exhibit 91, that's a loan to shareholder. He takes a loan payment out, but what does he do? He shifts it over to Komplique. He's hiding his money, just moving it from one account to the other, but he owns both. He's a sole owner of both.

But he avoids keeping money like that in his personal account where the IRS collection folks might find it. So when he fills out those forms listing his assets to the IRS, asking for an installment agreement, he says I got 108 bucks in my account. My business isn't worth anything, but I've loaned it gobs and gobs of money I didn't have to loan it, but it's there, so you can't get it.

Check out the wire transfer in Exhibit 134. It's at

page 10832. This is a wire transfer from Komplique to Stoneleigh-Burnham School for the benefit of Manuela Uribe, $21,000. Ask yourself, doesn't that look like he's paying the tuition for somebody at a school, out of Komplique funds, not his own funds. And he can do that because he's in charge of Komplique. He can have wire transfers sent because he's got access and control over the account. Put your money in there, send it wherever you want, whatever luxury items you might want. That's all fine and good, but you're still not paying your taxes.

Another thing to consider, Peregrine Financial Group. He opens business accounts there. As you recall, approximately 10 different accounts, using his US passport, but when it comes to his personal account, does things a little differently. Take a look at Exhibit 115. When he fills out that online application, and he does it in a different time frame, he does it online. The IP address says he's in Zurich, Switzerland. The address he gives for himself, I can't pronouns it right now, but it's a place in Switzerland. He says he's not a US citizen, and there's no Social Security number. Then he completes the W-8BEN. It says right on the very top, just right near the top, "not to be completed by a US citizen." And then down at the bottom, above the jurat, there's another part that says it's not for US citizens, people who are not subject to US tax withholdings.

And then there's the jurat. That's the part that we all sign when we sign our tax returns. Where it say we're signing subject to the penalties of perjury. It's right there. He signs it. Now, ladies and gentlemen, this is, according to the testimony that was elicited regarding the defendant by defense counsel, he's a technical wizard. He's a really smart guy and, in fact, he shows he's smart in this case.

This form is not hard to understand. It's not a 400 page document. It's less than a full page. It's not hard to read. It's not hard to understand, but it's not something that's unimportant. It is important. Anytime you sign something subject to the penalties of perjury, you know it's important. How often have you signed that? When you filled your tax returns out? When you made your loan applications? Maybe some other instances, but when you know it's right there saying, stop, wait, this is important, you're going to be bound by this statement. That's why each witness who came into this courtroom had to stop, raise their right hand and take an oath to tell the truth, because it's important.

And what is the consequence of Mr. Pieron's lie on his W-8BEN form? The consequence is that Peregrine Financial Group will not report any earnings on his account to the IRS, so the IRS never has a way to know that he has that money, and if you look at it, he put $50,000 in there. He put $50,000 into that account and left it there for months. And there -- a

big deal was made out of the fact that he earned 3 cents of interest.

Well, that's not the point. He's got $50,000 hidden there and there's no way for the IRS to know it's there, because he's covered it up. He's filled out a very simple form online and a simple form called the W-8BEN and said, no, I'm not a US citizen. I'm not subject to your taxation. I'm going to rely on the treaty laws of the place where I live, where I'm a citizen, Switzerland.

And remember he took that money back out of there, that $50,000. He takes it out in April. Now, isn't that somewhat significant. April is the month when our taxes are due, and everybody knows you can't turn on the TV without seeing some sort of tax service commercial or something like that. When he takes that money out, does he use it to pay his taxes that are already years overdue for 2008, 2009? No. We know he doesn't it. We don't know what he does do, but we know for sure he does not do that. It's just another incident of him moving the money around and spending it but keeping it out of the reach of the IRS.

Let's talk a little bit about spending money, too. Remember he entered into that installment agreement? In 2012 he sends in saying this is all I can afford to pay, 1500 bucks a month. Well, you saw the transcript. I know it was boring yesterday, but we went through it with Charles Lake. He made a

grand total of six $1,500 payments on that account under that agreement. Everything else that went on to the 2008 tax return was refunds that were taken away and applied to that -- not at his direction, by automatic operation of IRS procedures, but he makes six $1,500 payments of a period of about six months, in 2012.

But while protesting that that's the most he can pay, he goes out and buys himself that big 1,000 CC Kawasaki motorcycle. He pays $18,901 and change and pays to have that bike souped up, repainted, gets this fancy customized bike. At the same time between -- when he says I can't pay, and he finally starts making that big $1,500 payment, he goes out and buys the bike, the motorcycle.

And, again, no lien on it. It's free and clear. Of course, it doesn't last long, because he crashes it, but that's not the point. The point is that Mr. Pieron, again, decides, rather than paying taxes that he owes, and has owed for years, he uses a substantial sum of money to buy himself another luxury item, a motorcycle.

All of the things in evidence just discussed, ladies and gentlemen, show you what you need to know. I'm not going to -- I'm not summarizing everything that was presented, but those are some of the highlights. But what you need to know is that defendant owed taxes, and that he willfully failed to pay them.

He admitted that he owed taxes when he filed his 2008 and 2009 tax returns. He admitted he owed taxes when he signed the information statement saying he owed $444,888 in 2012. He admitted he owed taxes when he offered to pay $1,500 a month to make that -- pay off that tax arrearage, and he admitted he owed taxes when he offered to pay $30,000 to end his tax problem accumulated for several years.

And he admitted he owed taxes when in March of 2018, a year ago, he paid over $600,000 when he knew he was about to be charged in a criminal case. How did he know that? Well, people he dealt with at AHP had been interviewed. He, himself, had sat down with federal agents and done handwriting exemplars so they could be sure he's the one signing these tax returns where he admits he owes money. And he knew it when he paid the other big check-in October of 2018 for over $2,000 -- $200,000 excuse me, which was after he had been charged.

Now, the defense will want to make much of the fact that he filed a 1040X, and that's an amended return in 2014, which, if correct, would substantially reduce his taxes. But he files several returns. Signing each return attesting to their truthfulness, under the penalty of perjury. He gives different information to different accountants over different time frames or different preparers and gets different results.

And note, he's still trying to get out of it, paying his taxes, by filing something saying doubt as to liability.

Pieron says, I'm not sure if I owe, I have doubts, but I'll give you $30,000 just to make sure. But, ladies and gentlemen, what you see in this case is he only says that because it's to his benefit. He hopes he can get the IRS to let him off the hook by paying $30,000, and he's willing to spend that much to make them go away.

But even that is an act of evasion. He knows he owes. That is why, when the heat's on, and he knows he's going to be charged, now he's ready to pay. He finally pays up in 2018 because he does know, he doesn't have a doubt, he knows, you don't pay those large sums of money if you don't think you're going to owe them. And he pays them, hoping and praying, that paying will get him out of the criminal case.

But that's not how it works, ladies and gentlemen, and you should not construe those payments as anything other than evidence that the defendant knows he owed and wasn't going to pay until he absolutely had to. He spent nine years evading, but that's -- you don't get out of a criminal charge by paying back. If you stole money, you don't get out of that charge by giving the money back, and you don't get out of tax evasion by giving -- paying up when you finally have that as your last hope for avoiding being in trouble.

A lot of people would not pay taxes if you could get out of paying them until you're charged, get charged and then your problem with the criminal law goes away. So don't let the

fact that he paid that money give you any reasons to question his guilt on the charge before you.

Don't be fooled. That's not how things work. Paying taxes nine years after they are due is simply not a defense to the years of evasion, and, in fact, it's evidence of the evasion, because it shows he had the ability to pay.

Likewise, the Taxpayer Bill of Rights is not a defense. It's a distraction. It's an attempt to divert you over here. Look. Don't look at me. Look at what the IRS did or didn't do. That's a distraction, a diversion. Focus on what the defendant did and the defendant didn't do. You don't have to find -- you're going to have a verdict form. It's not going to ask you a question about how things went under the Taxpayer Bill of Rights. It's going to ask you if you find the defendant guilty of evasion, so don't be distracted and don't be confused or fooled by that.

Trying to use the Taxpayer Bill of Rights as a defense is like trying to tell -- or get out of a traffic ticket for going 20 miles over the limit by saying, well, somebody else was speeding too; doesn't work that way.

Rather, ladies and gentlemen, focus on the elements that the judge has just read to you. Those are the things that have to be proven, and focus on the evidence that proves that those elements have been proven beyond a reasonable doubt. If you take the law given by the Court, and look at the evidence

that was presented, that's the exhibits, that's the testimony from the witness stand. Again, not testimony or statements by counsel, because what counsel say is not testimony, it's not evidence. Ladies and gentlemen, you'll have no problem finding that defendant is guilty of evading the taxes he owed and he admitted he owed in 2008 and 2009.

THE COURT: Thank you. We're going to take a brief recess so that you can clear your mind. We will return after that to closing arguments on behalf of the defendant.

I would remind you, please, there should be no discussion concerning the case until it's actually submitted to you with the completion of closing statements so, please, no discussion of the case during the recess. Please rise for the jury.

(At 11:55 a.m., court recessed.)

THE COURT: About 10 minutes and we will return for closing arguments from defense.

(At 11:56 a.m., court recessed.)

(At 12:11, p.m., court resumed.)

THE COURT: Jury, please.

(At 12:12 p.m., jury arrives.)

THE COURT: Please be seated. Mr. Minns, closing statement on behalf of the defendant.

MR. MINNS: May it please the Court, ladies and gentlemen of the jury, I'm going to start with the end, go to

the beginning, and then go through my time chart again. The very end, April 2009 continuing until July 18th, 2018, in other words, the Government is saying he's still committing a crime on July of 2018.

And Ms. Parker said that every day for nine years that he did not pay a tax, he was committing a crime. Every day for nine years when he overwithheld on every single paycheck from 2009, 2000 -- no, from -- starting in 2010, '11, '12, '13, '14, '15, '16, '17, '18, you see all the 17,000, 18,000, long chart. I won't be using my chart, I'll be using the Government transcript which we don't completely agree with but it's in evidence and it'll show massive amounts of payment over the nine years.

Every time he overpaid, that was a trick, too. Every time he got a refund of 17,000, put to the 2008, 2009 returns, that was a crime. And when he paid off everything they said he owed, even though he owed nothing, that was a crime. So when he pays, he's committing a crime; when he doesn't pay, he's committing a crime. When he negotiates with them, begging them to sit down at the table with him, he committed a crime.

When he decides to make voluntary payments in addition to the excess that he's paying every payroll, which he knows he is, each year they're saying you don't get this refund back, you don't get that, they call that a crime. And they say he violated the agreement. That's just stunning because there

never was an agreement. He could never get their attention. He couldn't get their attention there CPA's. He couldn't get their attention through lawyers, anything. He couldn't get their attention, so there's no agreement. These are voluntary payments. Each voluntary payment, the Government says, aha, he paid, that's means he's a criminal; aha, he paid again, that means he's a criminal; aha, he sold his company and paid us off completely, that means he's a criminal.

There is nothing he could have done, nothing he could have done. Everything that he does that is what a normal honest taxpayer would do, they call it a crime. Everything. So if he pays, we're going to indict him. If he doesn't pay, we're going to indict him, and we're going to tell you that he is continuing to break the law on July18th, 2018. We'll talk about that in a minute.

You know, they have the expression make a federal case of it. That's the worst thing you can do to anybody's life. That's why we say, don't make a federal case of it. God knows nobody wants someone to make a federal case of anything in our lives.

Now my recollection, and I'll go through the chart, too, in a minute, when I started this trial, when we started together, putting tax returns on the board that my client had signed, and I'll go through them in a minute. In trial I asked Ms. Dale VanConett if the named partner signature on the 1040,

which wiped out all the taxes meant he believed it was a good return, and if my client, Jim Pieron's, signature on it meant he accepted and believed it was a good return, and she said yes.

So I found the handwriting expert's testimony to be very interesting. I enjoyed looking at it. She's both a degree in biology and a degree in art. It was very unusual combination, very intelligent and interesting person, and she agreed with us. We've never denied that. In my opening, I said that's his signature on there, and she agreed with us, and we agree with her.

There's something else that she said which agrees with another witness, and that is that this is the hasted signature of a business executive. I never would have picked up on this. A business person writes quickly when they're moving through mass amounts of paperwork and not reading them. And our -- our formal office manager got up on the stand, and she was very scared, and they -- they kind of made fun of her for being afraid, but she truthfully said that I was his office manager, I got promoted up until I was running things, and James would just come in and sign these stacks of paper without reading them.

So all of that goes to talk about this one piece of paper. There's all of the evidence that Peregrine gave the Government, which they hid secretly until Friday night, and the

first time anybody got to look at it --

MS. PARKER: Objection, Your Honor. This is way beyond the scope of the evidence.

THE COURT: Sustained. With respect to that representation.

MR. MINNS: We received the package, that's in evidence, Your Honor, Mr. Sasse asked the witness, and they were put in in two separate -- I'm not going to say the word the Court's stricken, but I am --

THE COURT: The delivery date is not --

MR. MINNS: Pardon?

THE COURT: The delivery date is not relevant.

MR. MINNS: All right. When the witness received -- the Government went through their package and handed the witness these pages, and this is all the witness had to testify from. The company didn't exist. It had been closed down a long time. It was not even at that record place, and this is what they gave him. And on one of the exhibits, it said page 1 of 4, 2 of 4, 3 of 4, and there was no 4 of 4.

Well, it turns out that if you spend a weekend looking through the actual exhibits that the company had turned over, page 4 of 4 is the United States of America passport of Jim Pieron. And if you remember Mr. Sasse when he explained on cross-examination question after question after question, there were -- I might get the numbers wrong, 10 or 11 accounts, every

single account had his correct Social Security number in it, his correct name, his citizenship, United States of America, and in case there was any doubt what he was conveying to these people, it said -- it had his United States of America passport. So if you're trying to hide your citizenship, you don't hand somebody your United States of America passport.

So what the Government did, out of context, they took one erroneous form, which should not -- it isn't for an individual, it's for a foreign corporation and part of whoever filled that out did it correctly. It was a Swiss company. They took that out of context. There's no possibility that was a mistake.

What it was is an effort to destroy the reputation of and American veteran and to say that he is not proud of his American citizenship, and it is an absolute unconditional lie proven uncontestably, when Mr. Sasse questioned that witness and showed the real documents and went through all of these.

It's an outrage, and the mere fact that the Government would try to trick us all with an absolute unconditional lie to slander a veteran, that is enormous reasonable doubt at the very beginning, with one of the longest witnesses who was on this stand. We all saw it. We all know it. It was wrong.

They feel like they have to prove this case through dishonest representations to you, and they feel like they can

snow you guys with this, and God help you, please examine that carefully. Please remember not -- remember it all, all the testimony. Remember the testimony when the Government was asking him, is it in here, any evidence of his citizenship, and when Mr. Sasse got back up there and proved beyond any doubt, and we're not required to prove anything, that he had told them 11 out of 12 times, and even in that one package he gave them his passport. There's no stronger way to say I am an American citizen, and I'm proud of it, than to show someone your passport.

Let me go through my time line now. Ron, could you help me or maybe I can do it myself.

May it please the Court, ladies and gentlemen --

THE COURT: I would just interrupt long enough to say that if counsel wishes to move so that they're able to observe the gentleman while he's using the exhibit, you may.

MS. PARKER: Thank you, Your Honor.

THE COURT: You may continue.

MR. MINNS: We moved it to this location at the request of the Government.

THE COURT: Yes.

MR. MINNS: Is this working, yes. Thank you.

Okay. Numerous witnesses testified to him residing in Switzerland. Government Exhibit 7 proves that also, and it shows that he filed tax returns in Switzerland when he lived in

Switzerland, and it shows the taxes under the supervision of an expert. He moved back one year, there's testimony to that, and in the one year he moved back, he filed and paid United States taxes.

Now, we had the testimony of his stepfather proving that he was concerned because most people don't know, and most people living abroad don't know, he was concerned that he had a duty to file US taxes, and his stepfather, who prepares tax returns for his other children, too, volunteered to help him. He gave him a power of attorney to ask the Government for forms and to check and get everything that he could get.

And his stepdad is no -- no small guy in the brain department. He knows more taxes than probably most of the people in this courtroom. He was a banking examiner. He prepared his family returns and his children's returns, and he prepared the returns up to 2007. And this very wise man said to his stepson, Jim, this next couple of years is over my head, so you've got to find someone else to do it.

And God help him, the person he found was The Tax Defenders. The Tax Defenders is an organization that's changed its name a few times and doesn't exist anymore and it has 15 full-time salesmen in their national campaign to tell people they can do anything magically with taxes, and a slick salesman gets him, gets his money, and then he's turned over to a very sweet woman who undoubtedly has the ability to handle a

noncomplicated 1040.

She has no corporate experience, no international tax experience. Even today, or a couple days ago in our courtroom, she was the only one -- everyone on the jury today, and everybody in the courtroom today, knows more about FBARs than this so-called expert on these materials. She testified she didn't know what an FBAR was.

Now, I'm not blaming her. I think this organization probably took advantage of her. One tax preparer for this national organization. She has no credentials. She has no education in tax, she has no CPA, no enrolled agent, no continuing education, and they give it all to her, and that's in evidence.

After meeting the slick salesperson, we see the conversation that there's a point in time, even before the return was filed, that Jim's not certain about her expertise, and he is asking, and you heard testimony from his former comptroller, that he sent him to what he regarded as a super fine, honest, competent CPA firm with one of the named partners was Mr. Pavlik.

And Mr. Pavlik is working with this, and then they tell you, the woman -- the CPA who's the floor manager, highly qualified who the Government put on the witnesses stand, tells you this was complicated. This was extremely complicated. This took enormous amount of time and work to get together.

She testified that Mr. Pavlik worked together with Jim to come up with all the recordkeeping, and it was still extremely difficult. It was bad recordkeeping before, and -- but we finally figured it out, and we figured it out and filed an amended 1040X, which is in evidence, and the -- well, first to fix things.

Now, the freeze code, you've heard the testimony on that. This froze him out, from all the civil process and everything, and no one was ever told that it was on there, and it's a secret. They don't share it with the CPA firms or anybody else. It's a secret at the IRS table. At this point in time, they had decided they weren't going to give him any of his rights, but they never told him. They never told his CPA firm. They never told -- well, they kind of told Ms. Nathan.

If you remember, Ms. Nathan said that they told her, don't talk to your client that's paying you, freeze them out, and she cooperated by putting them in voicemail hell. Whenever he calls, he has angst. He's really worried. He wants to get in compliance with the law. She testified to all that, and whenever he calls send him to voicemail. No one is to return his calls. No one is to return his messages. He is in voicemail hell. What a cruel and unkind thing for the Government to secretly do behind Jim Pieron's back and his family's back.

So he files for an installment agreement. This is

the right of his client, the right of all of us. It's covered by the Taxpayer Bill of Rights, and he says we want an installment agreement. If you remember the testimony of the witness, you don't have to prove you're indigent to ask for it, by the way. You may want to save some liquidity. You may want to have to -- have to have funds to keep your business running.

The IRS has to say yes or no or here's something different. They never answered. They didn't just put the cart before the horse, they killed the horse. So no response on this installment agreement, and Government has said they had an agreement. They were begging for an agreement, but there was no response for it at all. They don't know what's going on. They're in limbo.

And the Government says, well, the fact that he asked for an installment -- and, let's face it, this is a bargaining situation, which the Taxpayer Bill of Rights gives us. If we're trying to hold on to our capital, we will offer -- we hope they'll accept it, but we'll offer a low amount, and they will come back and disagree, and you will sit across from the table with them, and this is what our laws provide for, and they say no. They say, in fact, the fact that he asks under his Taxpayer Bill of Rights for the installment agreement, that's an act of criminal conduct. No response. None.

March 21st, 2014 Mr. Pavlik files, with our client's signature, we're not denying that's his signature, we're

shouting it out that that's his signature. Our client signs the return prepared by the CPA Kim Pavlik and no taxes are owed. There's no taxes owed.

As we sit here today, all the money that he paid extra from 2010 into 2014 is probably due to be refunded. So no taxes are due. Now, there is a -- there's no response from the IRS at all of any kind, and remember the testimony of Ms. VanConett. Can we put that exhibit up, Ashley, please, the chart of all the calls that she made to the Internal Revenue Service.

If you look at the chart of all of the calls and all the reasons, and this is in evidence, and this is -- what exhibit number -- Exhibit 1007. If we look at that, we see a competent, honest tax professional beseeching the Government, on behalf of her client, to give her answers, to follow the law, and we see -- you could see her frustration from the stand.

She wants to do her job. She wants an answer. She wants a response. The law says they must respond. They don't tell her he's been frozen out, we're not going to give him a response, we don't care what his rights are. And I -- I -- I don't know -- I know it's more than a dozen; one, two, three, four, five, six, seven, eight, nine, ten on that page, so I know it's more than 10. No calls returned.

The IRS says, well, the fact that she's trying to get

together with them proves that they're all criminals. That's just ridiculous. It's ridiculous even beyond all reasonable doubt. It's ridiculous. It's insulting to this esteemed tax preparation firm.

And check the difference in the credentials. They're all good people. I'm not denying the decency of both preparers, but the Pavlik return is created by a masters, with high degrees, with CPAs, with a huge firm. They don't have 15 advertising commission salespeople. They don't have commission salespeople. They're lined up with business, and our client isn't a big case for them. They care about all of their clients, but the $9 million in 2007 is not a big account for them. She told you that truthfully. It's the largest account in the entire history of the other company. That tells you something about the competency.

And the Government says -- really what they're saying, even -- even now, I don't know if they're going to change their answer on their final closing, I won't have an opportunity -- you'll have to listen to the evidence to see if you agree with it, but even now we don't care whether he owes a tax or not. We don't care. This is a tax case, and we don't care whether he owes a tax.

We're not going to give him an audit. We're not going to let him go to civil appeals. We're not going to sit down at the table with him and his representatives. We don't

care, and that was five years ago. Because we decided in 2011 we're going to give him -- put him in the middle of a federal case. We just don't care. We don't care what the truth is. We don't care if he doesn't owe a tax. We don't care.

Mr. Pavlik is so honest about this --

MS. PARKER: Your Honor, I'm going to object to vouching.

THE COURT: We can't -- the statement about Mr. Pavlik is not in evidence.

MR. MINNS: I'll change the word to transparency, will that work, Your Honor? Transparency.

Mr. Pavlik is so transparent about this, a month after he doesn't get an answer, a month after his partners asked 17 times -- or it looks like 11, a month after she's called 11 times, they're still trying to get a response, and he files a doubt as to liability, and he gives all his reasons in black and white print attached to the doubt of liability, which is in evidence, Defendant's Exhibit 1034. Could we put that on the stands -- up on the screen?

MS. ARNETT: That's --

MR. MINNS: Is that the wrong one?

MS. ARNETT: Yes, it's the amended return.

MR. MINNS: It's in the return?

MS. ARNETT: The amended return.

MR. MINNS: Okay. He tells them we don't owe

anything. Please read my reasons. If you disagree with them, please call me, contact me, I'm willing to sit with you at any time and show you my beliefs, and this is what I do for a living. And what do they do? They ignore him. And what does the Government do in this trial? They say that's a sign of guilt. Why would anybody say, I don't think I owe anything. I will pay you $30,000 if you will give me my life back, but I don't think I owe anything. Doubt as to liability. Even on the checks you'll notice it says bond, because he didn't ever believe he owed the money, still doesn't believe he owes the money today.

The evidence in front of you is only that he does not owe the money. There is no evidence that anything is wrong with that tax return. The evidence is that the IRS has known for five years he didn't owe a penny. They owed him money. The evidence -- can we put up on the screen the IRS transcript of all the payments and refunds and things that they agree they have received?

MS. ARNETT: It's Government Exhibit 18.

MR. MINNS: Government Exhibit 18, which came into evidence, which is showing -- and you'll have it in the jury room, it's showing almost every year a refund that went to the Government, that the client did not ask for and did not get back, that he doesn't know if he owes anything, he doesn't believe that he owes anything, but he's overpaying every month.

They say that's acts of criminal conduct. That doesn't make any sense.

So you'll see the Government receives the handwriting. That's in evidence today. Here's a man who is being harassed. His company's being harassed, and only his ex-lawyers and God knows why he agreed to go down and meet with two IRS agents, one of which has been identified and you met, and the other one was on the stand, and spent an hour and a half with them doing whatever he wants, whatever they want.

And, yes, he called his lawyer who told him, go right ahead. And I have to tell you, I would never let my client, any client, straight off the street I know nothing about them, I would never let them alone in the room with one IRS special agent let alone two. It's insane. But this trusting man, this veteran, he gives up his rights. He goes into the room and he's with them for as long as they want, and he does what they want.

You see all those letters that he wrote and all that. This is not the action of someone trying to hide something. Government says that's more evidence of his guilt. Good Lord how can you -- how -- he's -- thank God we live in America and you don't have to prove your innocence, but if you had to, what more evidence could you have than total complete cooperation.

You saw the Swiss records put into evidence, and you saw them because Mr. Pieron got them from Switzerland and the

Government says give them to us, and he gives them to them. Does whatever they ask him to do, and they say he's doing that because he thinks something's wrong, we might be trying to arrest him.

This man, this gentleman that I have been honored to represent, has shown that he has a high IQ. He's shown that he's good with computers, but God bless him, I have to tell you this, the evidence shows overwhelmingly that when it comes to law and taxes and defending his own rights, as opposed to our rights as a veteran, defending his own rights, he's an idiot. He doesn't defend any of his rights.

He hires, except for the Pavlik firm, a lot of really incompetent people, and they drop him in the grease each time. Some of them join into a collusion with the Internal Revenue Service not to even tell him that they've been contacted. Can you imagine your lawyer or your accountant or CPA hiding information from you when your very freedom was at stake?

Now, please post Defendant's Exhibit 1002. This -- after he's given them complete cooperation, over and over, all the way, he's never not cooperated, this is a bill in February for the first time -- oh, and bear in mind, you can own a corporation. You can own none, you can own 10 percent, 99-point something percent, which is obviously an estimate, but you can't commingle corporate funds with personal funds. You cannot do that.

The investors did not give him this money to pay his taxes. He would be stealing from them. Did the investors agree that he should have a Mercedes truck to haul around the luxury items? Yes, but he didn't own it. He couldn't put it in his own name. I find this to be remarkable. If he had put it in his own name, the Government would have said, oh, he put it in his own name, and it wasn't his money, he says a crook. But it's put in the name of the company, and they say, oh, he didn't put it in his name, he's a crook. He put it in the name of the company that is using it.

The two companies that were using him as a pianist and him to play at these events, they're crooked, too. I mean, why should that company that needs music for their presentations have music? It doesn't make any sense.

What I -- you know, you didn't hear from the Government, he owns a Volkswagen in his own name. He doesn't own -- he doesn't own a home. He's a tenant. And many of us are tenants, and most of us have not been able to own homes at some period of time in our life, and some of us don't own homes, but I'll bet we've never met anybody whose had as much money and as much opportunities that doesn't own a home.

They're putting all these assets up. I'm surprised they didn't put his underwear and his pants up, too. So they have two interesting assets that aren't anywhere near as valuable as a home, and this man, who has created two amazing

algorithms, doesn't own his own home. He and his wife don't sleep under a roof that they own.

And yet the Government talks about the fact that he was involved with a swimsuit company. It went out of business. It was worth nothing. This is something that's just insane. The Government says these -- a company that owns a Mercedes is worth more than 100,000 if the Mercedes is worth 70. We know it's 70 because that's what it was sold for eventually.

Well value does not equal assets. If any of us go into a bank, and we say I have a car paid off, and I want you to loan me money, and the banker will say, well, what are your liabilities? What do you owe? The liabilities were millions and millions of dollars. The companies were losing millions of dollars a year. Jim put his life savings, everything he had into them and lost it all. The companies kept losing money.

So he believed in them, he worked for them, and he put his money into them and he lost the money. He's probably entitled to more deductions for that that the first tax preparer did not pick up. But the Government's position is that a value is the asset, and the liability should not be considered, and they didn't put in evidence of liabilities because they didn't want you to know the value. Assets minus liabilities equals value. They must think that we're all idiots.

So they received this IRS bill February 2018 after

sale of major corporate profits and has cash in his hand that belongs to him, it doesn't belong to the investors, and immediately he pays the bill to the penny. Within less than 30 days of the receipt of that bill, when he has the money, he pays. That's defendant's 1003. He puts bond on it, because he doesn't believe he owes it. The Government --

MS. PARKER: Objection, Your Honor.

THE COURT: Sustained.

MR. MINNS: The Government now has that money, and so the disputed balance is paid off -- and if we could post Defendant's Exhibit 1005. The Government claims that he is still violating the law, that he still owes the tax that he does not owe, on the same day when the Government, through another arm of the Government, the computer figures out he doesn't owe anything, and the computer says IRS receipt, zero tax. That's the same day. It took the computer four months to do it. Four months after he's paid in full the disputed debt, which he did not owe, and will not owe, if they will ever give him his audit, ever give him his appeals right. Mr. Pavlik will win that. There's no evidence. No one has suggested that Mr. Pavlik --

MS. PARKER: Objection, Your Honor.

THE COURT: Sustained.

MR. MINNS: May I approach at sidebar, Your Honor?

THE COURT: The argument concerning whether or not

Mr. Pavlik will win, there's no evidence related to that, sir. That's your own commentary.

MR. MINNS: But we presume innocence, Your Honor, and the Government has the burden of putting evidence on that he will not win.

THE COURT: Correct.

MR. MINNS: The Government has the burden of proving beyond all reasonable doubt that if the Government gives him his legal rights, he will lose and --

MS. PARKER: Objection, Your Honor.

THE COURT: No.

MR. MINNS: And then, after losing, he will want to commit a crime, the Government cannot prove that because it is an absolute impossibility, and the Government has put on not one question mark of evidence that he will lose, not one iota of evidence that he will lose.

MS. PARKER: Objection.

THE COURT: Sustained.

MR. MINNS: But even then, even barring all of that, the Government's obligations to us is greater than that. Not only must they prove he will lose, they must prove he knew in advance that his CPA was completely wrong. In other words, they must prove that he did not rely on the information that the CPA gave him and did not believe that he did not owe a tax.

MS. PARKER: Objection.

THE COURT: The line of argument will be stricken, sir.

MR. MINNS: Am I permitted to say if he did not believe he owed a tax, he is innocent?

MS. PARKER: Objection.

THE COURT: Your client did not testify. You cannot testify about what he would say.

MR. MINNS: Am I permitted to say the presumption of innocence presumes the Government has the duty and the burden to prove that he does not believe he -- that he believes he was owed -- that he owed a tax?

THE COURT: Sir, we covered this extensively in chambers in conjunction with crafting the instructions. That line of argument is not available.

MR. MINNS: I apologize, Your Honor.

So starting in 1998 and 2008, has the Government proved beyond all reasonable doubt that Jim Pieron understood these complicated tax laws on his own clearly and decided to break them? There's no evidence of that. In fact, the only evidence is that if he had understood, he wouldn't be here. It would've be filed correctly. No taxes would have been due.

Has the Government proven beyond all reasonable doubt -- I just don't -- its an impossibility that they cannot prove. They cannot prove that he believed he was breaking the law when he wasn't. They cannot prove -- they have not

proven -- they haven't even shown us the correct application of the law. They haven't even shown us -- their entire case is based on an incompetent tax return filed by a company that is not using CPAs, not using tax preparers.

Their entire case is based on the -- they're saying you must accept that as true. You don't have to accept anything of the facts as true. You make up your own minds. They're telling you you have to accept as true that Carol Nathan was right, and you have to accept as true that Mr. Pavlik was wrong, and you have to accept as true that my client, Jim Pieron, is a tax genius and knew all this even better than the tax preparers themselves, even better than any of us with evidence that he didn't even know about at the time line. It's an absolute impossibility. This is not going -- this is not even -- this is not clearing up all reasonable doubt. This is an impossibility. There's absolutely no possibility.

Forty-one years of doing this, I've never seen so many impossibilities. It is impossible that he knew what he was doing and tried to ruin his life. It is impossible that he knows more tax than Mr. Pavlik. He doesn't even know more tax than Ms. Nathan. He just knows that he did not feel comfortable with her and that he went to the people that -- the department with one of the CPAs, Ms. -- not Carol --

MS. ARNETT: Dale.

MR. MINNS: Dale. Last name?

MS. ARNETT: VanConett.

MR. MINNS: VanConett. Dale VanConett, you heard her, you saw her. You decide if she was telling the truth or if she had a motive to lie. There's no motive that she had to lie. This was a client that they went to bat with. These were tax returns that they stood up for that was not as profitable as their normal clients. I apologize if I've not made that clear.

The Government -- it's the Government's job to draw a timeline proving the truth. It's not our job. I was kind of surprised in the beginning that they made no effort to show a timeline. The purpose of a timeline is to show as much clarity as we can with the evidence that we have or believe will come into evidence, exactly what happened. Government doesn't want clarity in this case. Clarity is their enemy.

I'd like to speak a moment about the charges and some of the language that I would ask that you read when you get back in the jury room. Our judge has defined an act of or failure to act is willful for purposes of tax evasion if it is voluntary, intentional violation of a known legal duty rather than the result of accident, mistake or negligence.

Did the Government prove beyond -- first of all, they didn't prove that there was an act of not paying the taxes or even owing the taxes, beyond any -- they didn't even put on any

evidence that a tax is due. The IRS has a form that says 1040X because mistakes are made constantly. The 1040X itself is evidence of a mistake, an honest mistake.

So they haven't proved that, and they haven't proved known legal duty. They haven't proved that Jim Pieron knew at any of these stages what his -- even today what his legal obligation is. If he doesn't owe any tax at all, which is the state of the evidence right now according to what the Government has put on. The Government must eventually -- perhaps that's it. He gets convicted, he gets charged, company goes down, and then he gets his audit, and he didn't owe a tax in the first place. That's putting the cart before the horse. This is not -- this is not a cart or a horse that should be arrested in the first place. This is not where we should be spending our valuable resources.

And they have not proven -- they haven't even -- they suggested it. Well, he knows what he's doing. He's -- he's the arch tax genius. He doesn't know anything about taxes. Well, he knew what he was doing when he walked in there and talked to two special agents of the IRS. He knew what he was doing when he didn't have a lawyer in there with him. He knows what he's doing. That's absurd. They're really -- really insulting -- insulting our intelligence with these accusations. They're beyond ridiculous.

Did they prove that he knows this stuff? No. In

fact, they proved he didn't know it, and it's not just a little bit of proof, it's beyond all reasonable doubt. It's the highest level of proof that is done in any court of law anywhere in the United States. It's the highest in the world. It's the highest standard. It's the reason we have veterans, the reason we defend our Constitution is because we believe in that, and we stand for that.

And as I said earlier, it was the reason why Thomas Jefferson felt these things were so important that you, you were so important. It is your job and your duty when the Government goes nuts, when the Government does really bad things, it's your job and your duty to protect us when there is no other body in our Constitution.

THE COURT: You're at 50 minutes, sir.

MR. MINNS: Pardon?

THE COURT: Fifty minutes.

MR. MINNS: Thank you very much, Your Honor.

Good faith. While the term good faith has no precise definition, it means, among other things, an honest belief, a lack of malice and the intent to perform all lawful obligations. In assessing defendant's good faith, you may consider his reliance on an accountant or professional tax advisor, if you find that he has made disclosure of the facts to that accountant or advisor.

The Government said that Komplique can't play the

piano, that it's actually corporations just -- it's just paper. A corporation is just paper. Paper can't do anything, except through people that own it or run it or work for it and, yeah, paper can't play the piano, but an employee of the company can play the piano, and that's how they do it. Komplique is a piece of paper.

The Government says his name isn't on the account. That's just not true. You look at the accounts. He's got signing authority along with several other people. He's never hidden that from anybody. It is not his money to do with as he wishes. I'm sure everybody that works for somebody else wishes that their money could be used for paying taxes and things, even if you don't owe the tax. The Government says it magically became his car. No, it never became his car. Many people ride in company cars. You heard from the witness up there that it is a common thing.

Negotiation is not an act of evasion. Negotiation is what we do, and what we said at the very beginning, ignorance of the law -- it isn't a defense in the traffic case -- it ought to be -- but ignorance of the law is a defense if willfulness is an issue, and the Court has instructed you that you must find willfulness in order to go with the Government and give them the conviction that they are asking you to do.

Life isn't like the movies and the TV shows and everything that the Government discussed in their opening. In

real life, sometimes the good guy gets destroyed. Sometimes big powerful interests end up destroying them. Lots of inventors who come up with things don't end up owning their inventions because of this difficulty in commerce and capitalism, which needs at least a little bit of watching over.

In boxing, which I liked the reasonable doubt there. In boxing, reasonable doubt, it's the Government, the other side, has gotten a knockout, just beyond any reasonable doubt. They're on the canvas, they're lying down, referee counts 10 seconds. That's beyond reasonable doubt. Well, they haven't even landed an honest blow, and some of the blows have been way below the belt. They should have had to throw in the flag a long time ago, throw in the towel. They would have been disqualified from an honorable duel with that stuff about his citizenship.

One of the greatest lawyers of all time, John Adams, second president of United States in 1770 when he was -- before we became a country, when he was defending British soldiers who had fired on and killed colonists, and he won the case. He was a brilliant lawyer. Obviously the colonists weren't very happy about what had happened, but he reminded them of the tradition, which became a part of our laws, a part of our Constitution of presuming innocence. The man is innocent until proven guilty, and beyond all reasonable doubt because it is more important in our country to free 20 guilty people than to put one innocent

person in prison.

He closed that argument, which lasted, it appears, two days, I can't imagine being given two case nowadays for closing argument, echoing these things, which later on became part of our very existence and our Bill of Rights in 1789 and is part of our national faith, whether those of us who are religious, those of us who are not, it became a part of our national culture, which the entire world respects and admires. And when they're trying to, when they want freedom, they try to emulate us, so you must presume Jim Pieron innocent, but sadly there's no evidence of his guilt at all; even without that, he should be found not guilty.

I hope that the cross-examination was able to elucidate the truth that he is not guilty, but if you think he's probably guilty, you must find him not guilty. I hope that didn't happen. I wouldn't want to practice law again if I failed to communicate that, but even if you think he's probably guilty, you must find him not guilty.

The only time the Government's wishes can be obeyed by a jury of American citizens is when they have proven beyond all reasonable doubt the knockout. The guy's not moving. There's no movement. They're ready to cart him off. Now, if he gets up after the 11 count, then you can presume that they've proven something. They haven't even gotten a count one on this thing. It's just wrong, and they started off with

dishonesty and deceit, which is beneath -- which is beneath our Government.

Thank you for -- on behalf of Jim and his family, and his workers and these people, and thank you on behalf of my defense team. God give you the wisdom -- these are the words of John Adams -- to come out with the correct verdict of not guilty. Thank you.

THE COURT: Thank you, sir.

Government, brief rebuttal.

MS. PARKER: Once again, ladies and gentlemen, we're getting even closer to that final stage of the case where you can go into the jury room, deliberate and decide this case; and, again, I'm going to ask you to pay close attention. You took an oath to decide this case based on the law given to you in court and the evidence provided to you.

And the reason I reiterate that is probably obvious to you already. You heard a whole lot of stuff just now, as you did in other phases in this case, that aren't based on the evidence, things that aren't based on the facts, allegations of what was said or done that just simply are not part of the evidence.

Now, I hate to have to interrupt defense counsel with objections in closings. As the Court says, we have an obligation to object when things are not being done properly. Don't be taken in by that line of nonsense that was just fed to

you because that's what it is; 99 percent distraction and misrepresentation, distortion of the record. That's what you heard.

Mr. Minns, he tells you he's been practicing for 41 years. He knows what proper argument is. He knows what proper questioning is, but he wants to push the line.

MR. MINNS: Excuse me, Your Honor. I do object to her commenting on my making objections. I abided by the Court rulings every time.

THE COURT: I agree. Let's get back to the facts, please.

MS. PARKER: The real person, though, at issue, and this is the real point, it's not Mr. Minns, and it's not Mr. Minns' crazy allegations. The real point is the conduct of the defendant. The jury instructions don't say you have to decide what you think about the IRS. This is not a civil case where A sues B and B sues A and you have to assess, excuse me, the conduct of both parties A and B.

The judge will tell you, and he has told you, what you have to consider, whether the defendant committed the crime, whether the Government has established evidence that there was a willful failure to pay the taxes that were owed by the defendant for 2008 and 2009.

The rest is a distraction. There are allegations that we wanted to slander the defendant, even though he's a

veteran. Why would we want to do that? There's no desire to deceive you. It was the defendant who was trying deceive. He was trying to deceive the IRS and now he's trying to deceive you.

At various times he does various things, which I've already discussed, and I won't go into those in great detail, but the whole thing about the Peregrine stuff, you don't need 300 pages, and if you look at the one copy of the passport that came with his personal -- his personal account application, you can't make it out. He had to get a second one sent in at a later date, lo and behold, it's the same one -- the same one with the folded page that he used to open his business accounts.

Now, this is the computer whiz, okay. He had that other one, that other copy of his passport, but that's not the one he sends in when he sends in the application for the account where he says he's not a US citizen, he doesn't have a Social Security number, and he's going to rely on the treaty with Switzerland to not have tax obligations in the United States. You take a look at it, so who's deceiving who? He's hiding his interest in that account from the IRS.

Got to attack American Tax Solutions or Tax Defenders. Defendant chose that entity. They're in Chicago. How many CPAs or other tax preparers are in Michigan? He didn't go to those. He goes to American Tax Solutions because

they advertise, they have salespeople, we will get you out of your taxes. That's why he goes there. He goes there looking to get out of those taxes, not to the local CPA in Mt. Pleasant or Pavlik in Saginaw, anybody in Michigan. He wants those people that say I can get you out of this.

And when they sign -- prepare tax returns, he signs them saying they're accurate. He provides the information, and they show millions of dollars. And his angst isn't about getting his tax return filed. You look at the notes from Carol Nathan's testimony. Look at those notes. Such angst about trying to get the taxes reduced. Doesn't say taxes filed. The taxes are prepared. He now knows he owes a lot. The angst is over getting it reduced.

So he's not looking to pay the tax or get the taxes filed. He's looking to get out of the tax, and that's what this whole case is about. And he's already late on getting the returns done. He's years late.

So, again, that's a distraction, and then the whole thing about the IRS, that's a distraction. No where in the instructions will the judge tell you that you should consider all that distraction about the IRS. Rather, he'll give you very brief instructions, and then you can see it, read it, reread it, he read it to you once, about the conduct of the IRS.

It's not as simple as someone perhaps would like to

make you think, but I'm not going to paraphase the judge's instructions. I just ask you to keep that in mind because there are lots of claims made by the IRS, or regarding the IRS in the previous hour that are not part of the evidence in this case, and even if they are, they're not part of what you have to consider. They're a distraction.

You took an oath, ladies and gentlemen, again, to decide this case on the law and evidence, but also to decide it without sympathy or bias, and that's what the attacks on the IRS are. It's an attempt to make sympathy for the defendant. Sympathy that really isn't part of what you should consider.

You should consider the law and the evidence, and there's no evidence that the defendant does not believe that he owes taxes. On the contrary, he signs tax returns saying he owes taxes, and even that 1040X, it's not a certainty, it's a doubt. He says, if you believe this theory, then I don't owe. It's a doubt.

So, ladies and gentlemen, don't accept characterizations as to who was truthful or not truthful with regards to the various witnesses because, as the Court told you, that is for you to decide, not even the judge decides who is truthful or not truthful. You decide who you believe. You decide how much of their testimony to believe.

Now, one of the things was kind of interesting in that regard, Ms. VanConett was honest in a very important way

in that she acknowledged that she was trying to testify in a way that would protect her firm, so she had a motivation. The Court will tell you, you consider the motivations when you consider the testimony of the witness, but she did agree that that was the case.

And it's not true that you cannot mingle -- commingle personal and corporate funds. It's true that you cannot do it legally, but that's not the same as saying it's an impossibility. In fact, it is done, and it was done in this case, and that's exactly the point. That's what the defendant did. He commingled the business funds, most of which were businesses he solely owned and controlled, and he did it for the purpose of hiding his own assets.

Similarly, the fact that he doesn't own a home, that's his choice. That's not a point of anything other than it's his choice and why does he make that choice? Well, he doesn't have a house as an asset that can be seized. That would be something, if he was the sole owner of the house, that the IRS could take. But you don't have your asset -- I mean, you can't seize a rental house, so fine. You don't want to have that. You're driving around in a Mercedes Benz. You're doing other things.

Meanwhile your taxes are not paid. That is Mr. Pieron's taxes are not paid for years and years and years, and they're not paid in full. If you remember the testimony

correctly, until October 2018, which is after he's indicated.

THE COURT: Ten minutes, ma'am.

MS. PARKER: I'm almost done, Your Honor. Thanks.

He signed tax returns admitting that he owed those taxes and then -- so that's not the dispute here. The dispute is whether he evaded taxes, and he went on a course of conduct to show that he did. And it's -- it's hard to deal with all of these things, and I won't even try to address it all, but the suggestion was made that an employee of Komplique could play the piano. Is there evidence of that? No. Is there evidence that Komplique had withholdings for employees? No. There's evidence they did not have withholdings for employees. So what employees were playing the piano? There wasn't any withholdings for them. There wasn't any employees. This is all a series of explanations, but they're not based on the evidence. They contradicted by the evidence, and you, ladies and gentlemen, took an oath to decide this case on the evidence.

Now, I will need to wrap-up here, but I would like to use Mr. Minns' boxing analogy when he says it's a clear win when somebody goes down for the count. We agree. That's not the only way boxing matches are won. Not all boxing matching end with a knockout. The judge doesn't say you have to have a 10 count on the mat. He says it has to be proof beyond a reasonable doubt. He defined that for you. He explains it to

you, and you will decide using that standard, not the 10 count standard or any other standard.

You'll decide this case on the law and the facts, the facts, ladies and gentlemen, which are the evidence, not the imaginary assertions, and the unfounded claims, but the facts, and when you do that, you'll find the defendant guilty as charged. Thank you, Your Honor.

THE COURT: Thank you.

Ladies and gentlemen, we'll pick up in the portion of the remaining portion of the instruction that we did not read earlier.

Let me finish up by explaining some things about your deliberations in the jury room and your possible verdicts. The first thing that you should do in the jury room is to choose someone to be your foreperson. This person will help to guide your discussions and will speak for you here in court.

Once you start deliberating, do not talk to the jury officer or to me or to anyone else except each other about the case. If you have any questions or messages, you must write them down on a piece of paper, sign them and then give them to the jury officer. The officer will give them to me and I will respond as soon as I can. I may have to talk to the lawyers about what you have asked, so it may take me sometime to get back to you. Any questions or messages normally should be sent to me through your foreperson.

Do not ever write down or tell anyone how you stand on your votes. For example, do not write down or tell anyone that you are split 6/6 or 8/4 or whatever your vote happens to be. That should be -- remain secret until you are finished.

During your deliberations you must not communicate with or provide information to anyone by any means about the case. You may not use any electronic device or media such as a telephone, cell phone, a computer or any other similar device to communicate with anyone any information about this case or to conduct any research about this case, until I accept your verdict.

I will send the exhibits into the jury room when it is time for you to begin your deliberations. As I told you at the start of the trial, a written transcript of testimony does not currently exist. Excerpts of the trial testimony will be read to you or made available to you during your deliberations only absent exceptional circumstances.

Remember that you must make your decision based only on the evidence that you saw and heard here in court. Do not try to gather any information about the case while you are deliberating. For example, do not conduct any experiments inside or outside the jury room. Do not bring any books, like a dictionary, or anything else with you to help you with your deliberations. Do not contact or conduct any independent research, reading or investigation about the case and do not

visit any of the places that were mentioned during the trial.

Make your decision based only on the evidence that you saw and heard in the court. Some of you have taken notes during the trial. Whether or not you took notes, you should not be influenced by the notes of another juror, but you should rely on your own memory of what was said. Notes are only an aid to recollection. They are not entitled to any greater weight than actual recollection or the impression of each juror as to what the evidence actually is. Whether you took notes or not, each of you must form and express your own opinion as to the facts of the case.

Your verdict, whether it is guilty or not guilty, must be unanimous. To find the defendant guilty, every one of you must agree that the defendant [sic] has overcome the presumption of innocence with evidence that proves the defendant's guilt beyond a reasonable doubt. To find him not guilty, every one of you must agree that the Government has failed to convince you beyond a reasonable doubt; either way, guilty or not guilty, your verdict must be unanimous.

Now that all the evidence is in, and the arguments are completed, you are free to talk about the case in the jury room. In fact, it is your duty to talk with each other about the evidence and to make every reasonable effort you can to reach unanimous agreement. Talk with each other, listen carefully and respectfully to each other's views and keep an

open mind as you listen to what your fellow jurors have to say.

Try your best to work out your differences. Do not hesitate to change your mind if you are convinced that other jurors are right and that your original position was wrong, but do not ever change your minds just because other jurors see things differently or just to get the case over with. In the end, your vote must be exactly that, your own vote. It is important for you to reach unanimous agreement, but only if you can do so honestly and in good conscience.

No one will be allowed to hear your discussions in the jury room, and no record will be made of what you say, so you should all feel free to speak your own minds. Listen carefully to what the other jurors have to say and then decide for yourself if the Government has proved the defendant guilty beyond a reasonable doubt.

Each of you has been furnished with a copy of the verdict form to aid you in your deliberations. However, when you reach your decision, your foreperson should complete only the official verdict form. The official verdict form will be presented to you in a brown folder by the bailiff along with the exhibits admitted during the course of the trial.

If you decide that the Government has proved the charges against -- the charge against the defendant beyond a reasonable doubt, say so by having your foreperson mark the appropriate place on the official form if you decide that the

Government has not proved the charge beyond a reasonable doubt, say so by having your foreperson mark the appropriate place on the form. Your foreperson should then sign the form, place the date on it, and it will be returned to me in the courtroom when you return.

Remember that the defendant is only on trial for the particular crime charged in the indictment. Your job is limited to deciding whether the Government has proved the crime charged. Also remember that whether anyone else should be prosecuted and convicted for the crime is not a proper matter for you to consider. The possible guilt of others is no defense to a criminal charge. Your job is to decide if the Government has proved this defendant guilty. Do not let the possible guilt of others influence your decision in anyway.

Any additions or corrections, Government?

MS. PARKER: Yes, Your Honor. On the unanimous verdict instructions there was a point in which you, I believe, said "defendant" rather than the "Government." I would suggest just rereading the instruction.

THE COURT: No harm. Returning to that portion of it.

Your verdict, whether it is guilty or not guilty, must be unanimous. To find the defendant guilty, every one of you must agree that the Government has overcome the presumption of innocence with evidence that proves the defendant's guilt

beyond a reasonable doubt.

To find him not guilty, every one of you must agree that the Government has failed to convince you beyond a reasonable doubt; either way, guilty or not guilty, your verdict must be unanimous.

Have we covered the concern that you had?

MS. PARKER: Yes, Your Honor. Thank you.

THE COURT: Any other additions or corrections?

MS. PARKER: None from the Government.

THE COURT: Mr. Minns.

MR. MINNS: None, Your Honor.

THE COURT: Juror No. 12, I don't have my seating chart immediately in front of me. Mr. Foss, the bailiff indicated earlier that you weren't feeling well.

JUROR NO. 12: I have the beginning of a cold.

THE COURT: The key concern that I've got here is that the -- we will be making a decision concerning an alternate. The alternate will be excused from deliberations unless necessary ultimately to complete them. Are you comfortable that you're healthy enough that you can stay with us if you're on the jury?

JUROR NO. 12: Probably.

THE COURT: Okay. Can I have a brief discussion with counsel at sidebar.

(Sidebar conference as follows:)

THE COURT: I had thought, based on what I had heard from the bailiff, that he was not feeling well at all and did not want to participate. The only question I've got is whether you would want to utilize him as the alternate, or if you want to go -- start with the way that you originally approached it?

MR. MINNS: I think it would be better to keep him and then if he gets sick bring the alternate in, but I don't -- I've been coughing myself.

THE COURT: Is it -- the alternate then would be No. 13, Mr. Morris.

MR. MINNS: Not alternate No. 7?

MS. PARKER: Yeah I think it's --

MR. DEPORRE: It's -- the alternates were 13 and 14.

MR. MINNS: Well, I --

MS. ARNETT: Well, I thought the -- okay.

MS. PARKER: We discussed that variation, but I thought --

MS. ARNETT: Yeah I thought we ended up with --

THE COURT: No. 13, Mr. Morris, right, Kenneth Morris.

MR. MINNS: Which one is --

MS. ARNETT: I thought the alternates were seven --

MR. SASSE: Farthest to the right that's left. There's an empty seat next to him, which is the one we lost.

THE COURT: Okay.

MR. MINNS: Well, do we want to let him --

MR. SASSE: I don't care.

MS. ARNETT: I don't have a position.

MR. MINNS: I have no objection.

MS. PARKER: I'm fine with excusing No. Seat 12 or 13, whatever the defense wants.

MR. DEPORRE: I would --

MR. MINNS: I have no objection.

THE COURT: All right. We'll excuse 13.

MS. ARNETT: Yeah, but if you don't have an alternate, what if something happens?

MS. PARKER: Yeah, I think it would be better to have healthy jurors than unhealthy jurors.

THE COURT: Well, I'm fully comfortable with that. It makes some sense to me.

All right. We'll excuse Mr. Foss, No. 12.

MR. MINNS: If we lose a juror, we still have an alternate, they can start over again, and we don't start the trial over again; they just start deliberations over again. If we don't have an alternate, then --

MS. ARNETT: Right.

MR. DEPORRE: Are you suggesting permanently excusing No. 12, or are you suggesting designating him as an alternate, because I agree with defense counsel.

THE COURT: He will be an alternate.

MR. SASSE: Subject to being recalled?

THE COURT: Subject to being recalled.

MR. DEPORRE: Then I'm okay with that.

MR. SASSE: Judge, while we're here, I just want to make clear that while we agree that the instructions you gave were as we understood them to be, we still want to maintain our objections.

THE COURT: Sure, no waiver.

MR. SASSE: Exactly.

(Sidebar conference concluded.)

THE COURT: Mr. Foss, we kind of came to the conclusion that it probably makes sense, if you're not feeling well, to excuse you as the alternate. You will still be subject to recall, if it were necessary for us to have a full complement of 12 jurors if there was a problem with any of the other members.

What we will do is to excuse you now to go to the library where we'll get contact information for you so that if we needed you, we can get in touch with you. We will also call you and inform you when the jury's reached a verdict, so that you would know that your obligation's at an end.

Is the other clerk available? Sir, we will excuse you, and thank you for the investment that you have made.

(Juror No. 12, excused.)

(At 1:33 p.m., bailiff sworn by the clerk.)

THE COURT: Ladies and gentlemen of the jury, you may retire to the jury room to deliberate your verdict. Please rise.

(At 1:34 p.m., jury leaves.)

THE COURT: We are outside of the presence of the jury. Counsel, will you remain available in the building or do you wish a period of time to leave in order to get something to eat.

MR. SASSE: Probably going to want to get something to eat, speaking just for myself.

MS. PARKER: Will the jury be eating I assume.

THE COURT: Yes.

MR. DEPORRE: I think that'll give us sometime.

THE COURT: What we'll do is just simply let them know that you won't be available for approximately an hour so that if they have questions they will understand that they can't be responded to.

The one concern that I do have is that the schedule that we initially gave them, while we did tell them that they would remain with us in court until deliberations are completed, we did probably throw a bit of a wrench into their schedule, so we may end up with some logistical problems that that may need attention, we'll see.

We'll let them know that we will be unavailable for an hour during the first part of their deliberations. We'll

see you at approximately 2:30.

Record's closed.

MS. PARKER: Judge, we have our exhibits to send back, and I'm sure defense does also.

MS. ARNETT: We did. We've already looked at each other's exhibits.

MS. PARKER: I didn't look at them but --

MS. ARNETT: Yeah.

MR. DEPORRE: We squared them.

MS. PARKER: Okay.

THE COURT: And you will organize those so that Mr. Haines can get those into the jury, your exhibits. They're all done. And the Government's.

MR. DEPORRE: Just this box.

THE COURT: We'll get them to the jury as soon as possible. Record's closed. Thank you.

(At 1:36 p.m., court recessed.)

* * * * *

C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the proceedings in the above-entitled matter.

Carol M. Harrison

Date: 3-26-2019

Carol M. Harrison, RMR, FCRR
Official Court Reporter
United States District Court
Eastern District of Michigan
1000 Washington Avenue
Bay City, MI 48708